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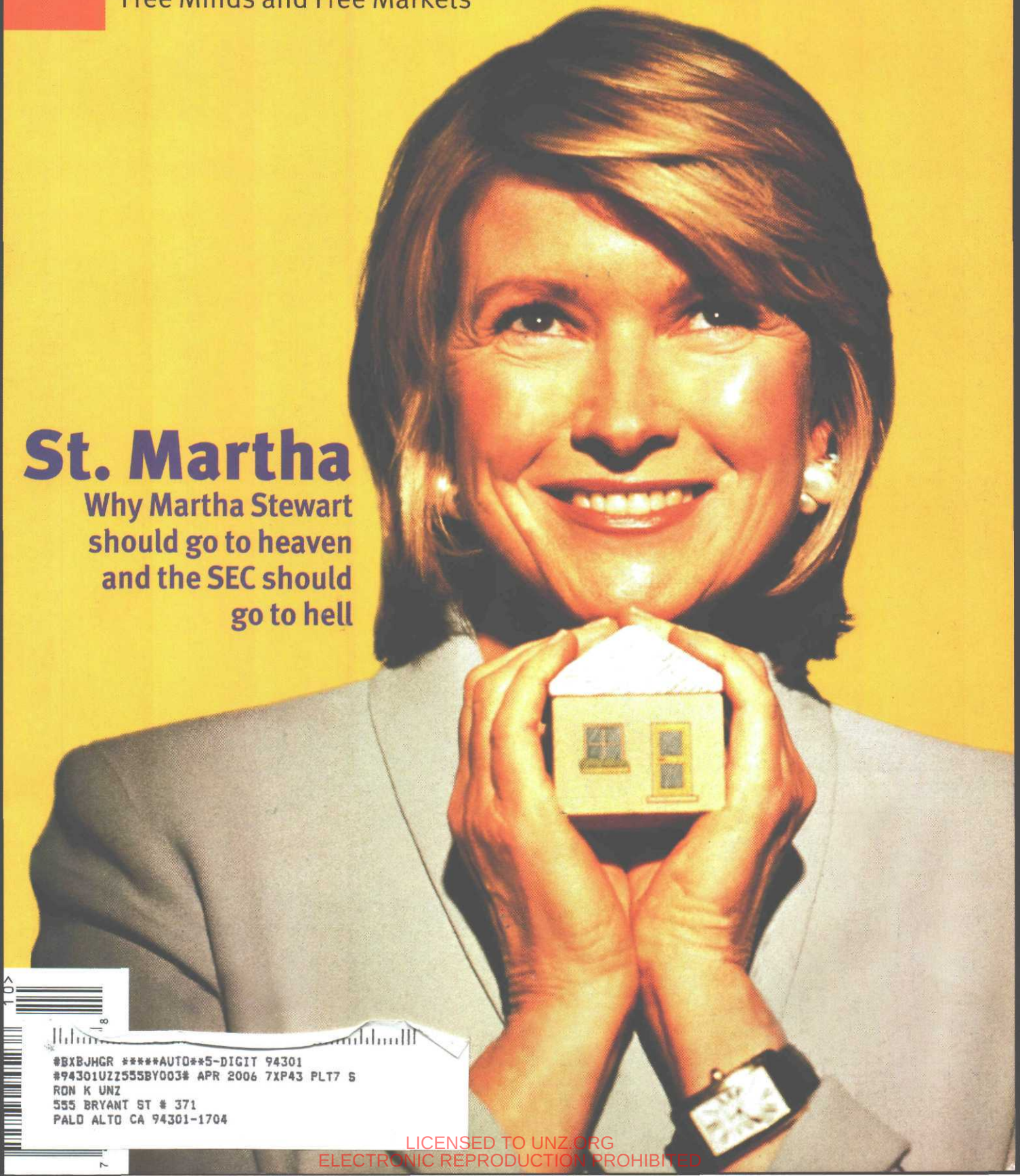
Free Minds and Free Markets

Why the States Are Broke

Who's Meaner, Liberals or Conservatives?



St. Martha

Why Martha Stewart should go to heaven and the SEC should go to hell

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reason
Free Minds and Free Markets

October 2003
Volume 35, No. 5

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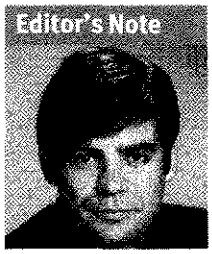

Is Schadenfreude a Good Thing?

HAS THERE EVER been a defendant as thoroughly unsympathetic as this month's cover gal, Martha Stewart, currently in trouble for selling stock in the pharmaceutical company ImClone?

I suspect that on some level we're all rooting for the doyenne of domesticity to get sent to the slammer—and not just to see how she'd accessorize prison grays. Long before the Department of Justice criminally indicted Stewart for securities fraud and obstruction of justice and the Securities and Exchange Commission charged her with insider trading, the American public had already convicted her of a long list of particulars.

These include setting impossibly high standards for everyday home living (including the making of such horrors as cranberry flower frogs and marzipan turkeys) and overexposing herself through an endless stream of self-branded products ranging from magazines to TV shows to furniture. Stewart has even spawned a cottage industry of parodies, such as the "completely unauthorized autobiography" *Martha, Really and Cruelly*.

Perhaps her ultimate crime was letting the public learn of the gulf between her cloying public persona and the tough-as-nails private person who has become a massively successful CEO (it hasn't helped that she's a woman). As tell-alls such as Jerry Oppenheimer's *Just Desserts* and Christopher Byron's *Martha, Inc.* have made clear, Stewart is a driven entrepreneur who can and will turn off the charm whenever she needs to. The most memorable scene in the TV movie based on Byron's book comes when Stewart, played by Cybill Shepherd with *Mommie Dearest* overtones, screams to a woman she thinks is sleeping with her eventual ex-husband, "Hey slut, I'm sending your parents a letter and telling them you're a whore!"

All this makes Contributing Editor Michael McMenamin's job that much tougher in "St. Martha: Why Martha Stewart should go to heaven and the SEC should go to hell" (page 22). Yet McMenamin shows that the most serious criminal charge against Stewart—securities fraud—"is based on the fact that she denied to the press... that she had engaged in insider trading. This was done, the feds say, not for the purpose of clearing her name, but only to prop up the stock price of her own publicly traded company, Martha Stewart Living Omnimedia. In other words, her crime is claiming to be innocent of a crime with which she was never charged."

More important, McMenamin demonstrates that the SEC's civil case against Stewart "hinges upon an elastic understanding of insider trading, an offense that Congress has never defined," and that "the justification for the ban on insider trading, which makes little or no economic or legal sense, is just as murky as the behavior covered by it."

In disturbing detail, McMenamin documents that the SEC and the Justice Department have a long history of selective, vindictive, and ineffective prosecution. That may drain some of the fun out of the spectacle around the Stewart case, but as she might say, it's a good thing to know who the villains of this drama really are.

Nick Gillespie

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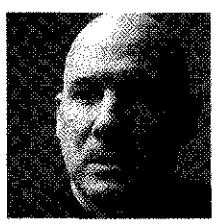

Mike Alissi

North Carolina native JOHN HOOD blames **reason** for sparking his interest in public policy. A 1987 internship at the magazine began his career as a journalist, which led him to cover state legislative sessions for Tarheel State newspapers and radio. The sessions, he says, "didn't bear much resemblance to the civics lesson version of government. There weren't many Jeffersonian or Madisonian debates." In 1990 he helped found the John Locke Foundation, a Raleigh-based think tank of which he is president. Hood first encountered Parkinson's Laws, which he applies to state budget policy in this issue (page 32), when his mother gave him one of the historian's books as a teenager. He knew there was something true in Parkinson's account, he says, "because it was genuinely funny. If you come at understanding government without a sense of humor, you'll never get it."

Senior Editor CHARLES PAUL FREUND grew up on horror comics—gruesome dime thrillers with titles such as *Uncanny Tales*. He now produces comics of his own, in collaboration with artist Peter Hoey, for the strange and wonderful *Blab!* In "Subversive Style" (page 64), Freund looks at another sort of horror comic: a graphic novel's account of life in theocratic Iran. Since joining **reason** in 1996, the Washington, D.C., native has written extensively on the intersection of liberalism, popular media, and "people using the power of culture to deal with capricious regimes," a focus Freund summarizes as his "celebration of vulgarity."

There is no **reason** without its publisher, MIKE ALISSI, who has been relentlessly promoting the magazine since 1997. But Alissi, who over the years has completely overhauled distribution, circulation, and printing, sees things differently. "There is no **reason** without our readers," he says. "They're the best—after all, they know a great magazine when they see one." Alissi, who lives in Connecticut with his wife and two children, says coming to **reason** was a natural choice after five years in Washington, D.C., where he saw too much Capitol Hill wheeling and dealing as a representative of the nuclear industry.

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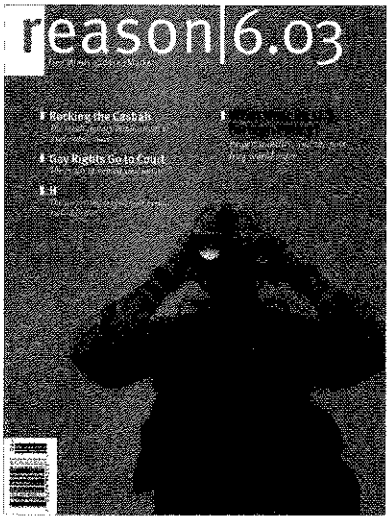

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Gay Rights Go to Court

I am gay and have been a big fan of **reason** for many years, so I was disappointed to see Cathy Young spend two pages on a discussion of "gay rights" ("Gay Rights Go to Court," June). Since when do groups have "rights"? Only individuals have rights. Anti-sodomy laws violate the rights of individuals in serious and fundamental ways. But when did a marriage license become a basic human right for anyone?

A marriage license documents the state's sanction of a romantic and sexual relationship between two people. That sanction, in turn, subjects the terms and conditions of that relationship and the rights and responsibilities of its participants to legislation and regulation prescribed by the state. I despair that so many gay people miss the point that the state's refusal to grant them a marriage license is an exemption from the intrusion of that state into their personal lives.

Nothing in the law prevents gay couples from owning property jointly, creating enforceable partnership agreements, powers of attorney, medical proxies, or any number of other legally binding agreements that define and document the nature of the relationship. We should follow the example of the thousands of practicing polygamous families who, rather than lobbying for polygamist "rights," simply live their lives in peace, love, and innocence—happy to be excluded from the repressive mainstream.

John H. Northrup
Littleton, CO

H

I've just finished reading Jacob Sullum's "H: The Surprising Truth About Heroin and Addiction" (June) and am not at all impressed. I find it interesting that while Sullum quotes a sociologist who wrote that "narcotic addicts tend to 'mature out' of the habit in their 30s," every example of a "successful addict" (save one) in the article was 40 or older. How did he come to that conclusion? If he surmised that people in their 30s stopped using heroin because of a lack of criminal or corrections-related activity, he overlooked the possibility that many of them moved or died.

As a law enforcement officer who has seen firsthand the tragic results of heroin addiction, I can tell you that they are that bad, and that frequent. The fact that heroin kills is incontrovertible. Any attempt to minimize this fact, or to try to legalize or normalize or rationalize its use, demonstrates a profound irresponsibility, a profound stupidity, or perhaps both.

Stephen K. Hancox
Flemington, NJ

Thank you for the article. In the 19th century, heroin was considered a "gentle painkiller." Anyone who has enough physical pain to justify morphine use might just as well use heroin. If heroin were legalized, the drug companies that produce morphine would have to compete with low-cost overseas producers of heroin, to the benefit of the consumer. Heroin was actually used to help people get off morphine addiction, as it was considered the less addictive of the two. There is no logical basis for its demonization.

Kirk Gray
Los Angeles

What tripe! I held my dying sister in my arms on the way to the hospital after she overdosed on this "harmless" drug. She had already vomited frothy, blood-specked foam, lost control of her bowels and bladder all over me, convulsed, and died before we could get her to the hospital. I think the *New York*

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Times story referenced in the article was fiction, as many of their articles have proven to be, and I think it is very harmful in justifying a filthy, deadly habit.

As my sister yielded more and more of her once beautiful self to this addiction, I tried to help her by intervention, forcing her to go into drug treatment, only to see her time and again sink back into her addiction. Tell the two children my sister left behind that heroin is just a harmless thing.

J. Turner
New Orleans, LA

I just finished reading Jacob Sullum's article; he is partially right and partially wrong.

I am an opiate addict. I have been since the day I tried heroin in San Francisco, back in 1969. I was in the U.S. Army, having the time of my life. I absolutely loved reefer and acid, and when I tried junk I loved that too. I just chipped while I was in the Army. But within two years after I got out of the Army, I had my first habit.

When you're young, kicking a habit is a piece of cake: Three days of feeling crappy, and you're a new man. I would use for a while, then stay straight for a year or two or three, then start over. By 1984 that three days of jonesing had turned into four or five, and it was no fun at all. After 1984 I stayed straight for 13 years. Then in 1997 I hit it hard again for three years. Man, all of a sudden I was sick. After two days, I couldn't stand it anymore. This time, the nightmarish anxiety alone was beyond description. I went and copped some dope, then got on a methadone program. I've been on methadone now for three and a half years. It doesn't get me high, but it does give me that satisfied feeling that an opiate gives you.

I did work the same job for 27 years, and I never had to steal. But I did sell all my possessions a couple of times and damn near lost my house. I retired with a good pension, but I sure do wish I had never tried heroin. If you have never tried it, don't.

Mike M.
St. Paul, MN

Jacob Sullum replies: The study by Charles Winick to which Stephen Hancox refers was based on addicts reported to the Federal Bureau of Narcotics and Dangerous Drugs. As I noted, the study has been criticized, mainly because addicts who disappeared from the bureau's files had not necessarily given up heroin. But subsequent research, including the Vietnam veterans study I discussed in the article, has shown that heroin addicts frequently do stop using the drug on their own. The fact that some people continue using heroin into their 40s does not negate that point.

Hancox says "every example of a 'successful addict' (save one) in the article was 40 or older." If by *addict* he means *user*, that is not correct. The subjects in the Vietnam veterans study, Norman Zinberg's research, the 1973 Harvard study, and the 1983 British study (all mentioned in the article) included many opiate users in their 20s and 30s. More important, Hancox's failure to distinguish between users and addicts overlooks one of my main points: The vast majority of heroin users do not take the drug daily.

More generally, it is misleading to cite the most extreme examples of heroin use as if they were typical. Some drinkers die of acute alcohol poisoning, get killed in traffic accidents, ruin their lives through excessive consumption, or succumb to the cumulative effects of heavy drinking. (As Hancox might put it, the fact that alcohol kills is incontrovertible.) But these examples of abuse do not prove that alcohol cannot be used moderately and responsibly. Likewise, even if we ignore the various ways in which prohibition makes drug use more dangerous, the fact that some heroin users die of overdoses (or, more commonly, risky drug mixtures) or develop habits that disrupt their lives does not mean there is no such thing as an occasional or moderate heroin user. Indeed, the government's own data indicate that such users are far more common than addicts.

Quacks and Flacks

Chris Mooney ("Quacks and Flacks," June) captures very well some missteps in alternative medicine, some practitioners of which have done a disservice to their profession in not adhering to rigorous scientific standards.

What got left out of "Quacks and Flacks" are the reasons many people have turned to alternative medicine in the first place. Mooney would have us believe only "quacks" and dupes need apply, but many people turned to alternative medicine only after traditional remedies failed them. And many have found relief or cures thanks to those treatments.

I turned to alternative medicine after many unsuccessful attempts to cure my eczema with traditional treatments. At best I found temporary relief. At worst, the use of cortisone damaged my skin nearly beyond repair. It was only after exploring numerous alternative therapies that I was able to find a treatment that brought the condition mostly under control.

Mooney also suggests thousands of people are taking risks when they turn to alternative medicine. What, you mean, traditional medicine has found a cure for cancer? Or AIDS? People aren't as stupid as he thinks. They are seeking

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out other remedies because they are more aware of the chances of surviving such conditions under traditional treatments than he is.

Of course, like other professions, alternative medicine suffers from malpractice. The woods are full of charlatans and cranks, so it's necessary to be careful and discriminating when choosing treatments and doctors. More scientific rigor in the field should help that selection process. But let's not throw the baby out with the bathwater, as Mooney would have us do. That would give little relief to those whom traditional treatments have failed.

Mark Hershey
Taipei, Taiwan

Look Who's Rocking the Casbah

Chuck Freund's article "Look Who's Rocking the Casbah" (June) touched on a fascinating topic, but I could not help but conclude that his evaluation of female sexuality in Arab cultures incorporated stereotypes and elements of Western bias.

Freund's analysis could have benefited from the excellent book *Nine Parts of Desire: The Hidden World of Islamic Women*, by Geraldine Brooks. Traditionally, sexuality in Muslim cultures has not been devalued and repressed as in the West. Rather, it is supposed to be strictly contained in the private sphere of the home. Women's sexuality has been fully acknowledged from the very beginning. Brooks' title comes from Muhammad's own remarks to the effect that a woman's sexual desire was nine times a man's. Hence Freund's claim that "a woman's enthusiasm for sex is considered suspect by traditionalists" is unfounded. I have seen Arabic movies where women at a wedding reception—segregated into a room separate from the men—sing bawdy songs about the pleasures the bride can expect on the wedding night.

Freund's intimations concerning "modernity" also hit on a topic accorded considerable attention in recent scholarship. Islamic societies are not anti-modern, but rather have been struggling to define their own versions of modernity as filtered through culture and tradition—a project with considerable potential for contradiction and irony, particularly in the Islamic Republic of Iran.

Todd M. Michney
Cleveland, OH

Charles Paul Freund replies: Female sexuality in Islamic cultures is indeed supposed to be confined to the private sphere. But the ideal is not sexual enthusiasm, which may threaten a man's control of his wife; it is compliance. Syrian novelist Ghada Samman catches the traditional view through a character who describes the ideal bride this way: "A maid by day, a slave by night, she'll be the ring on your finger which you can turn around as you wish and take off when you wish. And if you rub it, it will say, 'At your service....'"

Certainly, a traditional wife does not make such demands of her husband, as the female characters of Egyptian author Alifa Rifaat know to their sorrow. Last summer's Egyptian film *Sleepless Nights* features a frustrated wife who actually threatens divorce, one reason the film became a sensation. In any event, Samr, the flirtatious singer whom I described, was expressing herself publicly.

Teddy Roosevelt's Hidden Legacy

Michael McMenamin ("Teddy Roosevelt's Hidden Legacy," June) convincingly shows not only that Theodore Roosevelt had his own foreign policy, but that it was infinitely better than and antithetical to Woodrow Wilson's. What he does not say is that it was Roosevelt who enabled Wilson's foreign policy to come into existence.

In 1912, after failing to win the Republican nomination for president (thanks to party bosses who didn't want him), Roosevelt ran anyway, as an independent Bull Moose. This split the Republican vote and enabled Wilson's victory. Given Wilson's thoroughly destructive impact on the history of the 20th century and the likelihood that history would have been different and better had Roosevelt been president during the Great War, it is ironic that Roosevelt's biggest legacy is that he enabled it all to happen.

Michael Nollet
Melcher-Dallas, IA

What Next for U.S. Foreign Policy?

The impressive accuracy of the interview with me by Jesse Walker ("What Next for U.S. Foreign Policy?," June) was unfortunately counterbalanced by the title placed above it: "The Pacifist."

That term is not accurate, and it may confuse readers. My views do not fall into any of the types of "pacifism." Historically, most nonviolent struggles have been waged by people who were never pacifists. Many groups have chosen nonviolent struggle not on ethical grounds, but because they felt it would be most effective.

That means that future acute conflicts, including against extreme dictatorships, can be waged by people who are not pacifists, through skilled application of strategic nonviolent struggle. That fact opens new possibilities.

Also, my earlier book was mistitled. It is *The Politics of Nonviolent Action*, not *The Politics of Nonviolence*. My new book is titled *Waging Nonviolent Struggle*.

Gene Sharp
Albert Einstein Institution
Boston, MA

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Zoning vs. groovy theology

Sacred Music

Kerry Howley

MARRIED COUPLE William and Alex Pritts wanted to hold a concert on their 147 wooded acres in Bullskin Township, near Pittsburgh, but the local zoning commission insisted their land

could not be used for commercial purposes. Undeterred, the Prittses founded the Universal Church of Love and Music—a church that operates remarkably like a concert venue.

The "music church" is an amphitheater that welcomes bluegrass, rock, and jazz talent like the Zen Tricksters and the Jazz Mandolin Project. Churchgoers gain entrance by offering a $40 donation. "We're operating our church out of a strong belief that we have the right to be doing this, and that the zoning commission is violating our constitutional rights," Alex Pritts says.

The zoning commission is not amused. The couple was originally refused a zoning permit on the grounds that they live in "a very rural community, and the best use of [the Prittses'] land is agricultural," says Fayette County Zoning Director Tammy Shell. "We've posted several cease-and-desist orders on the property, and we will continue to do so."

The Prittses maintain that the cease-and-desist order cannot apply to a religious organization. Prior to founding the church, they battled the zoning commission for three years, taking extensive measures such as building roads, hiring a professional to do sound tests, and conducting traffic studies in an effort to comply. But the zoning commission kept presenting new barriers.

Shell vows the zoning commission will continue to pursue fines for violating the cease-and-desist order. William will have to appear in court to defend church activities, such as July's "Freedom Festival," which featured 18 bands and more than 800 guests.

"People loved it," Alex says. "People told me that it was the first time they felt as if they really belonged in a church." ▪

No Big Mac attacks

Lawsuit Pre-emption

Jacob Sullum

SHOULDN'T PEOPLE KNOW that if they eat too much they'll get fat? Maybe, concedes John Banzhaf, a George Washington University law professor who promotes lawsuits against fast food chains. But as Banzhaf points out, tort law is no longer based on what's reasonable. Shouldn't people know that it's dangerous to use a hair dryer in the bathtub, put their hands under a running lawn mower, or drive a car before removing the sun screen from the windshield?

Given the legal environment that has generated explicit

25 years ago in reason

"In recent weeks the world has once again witnessed the spectacle of political trials in the Soviet Union....It is for this reason that we urge a boycott of the Moscow Olympics—not as a mandate from our government but as a spontaneous outpouring of a free people."
—Robert W. Poole Jr., "Boycott Moscow"

"The village board of Hempstead, New York, has outlawed 'for sale' signs on local lawns. The ostensible reason is to prevent 'white flight.'"
—Bill Birmingham, Brickbats

"The influential social position of this elite [of anti-technology intellectuals], then, is threatened by the mass prosperity that is bred by technology and free enterprise. What better way to keep the riff-raff in its place than to kill both by abolishing all but feudal energy sources?"
—Petr Beckman, "Economics As If SOME People Mattered"

"Extreme egalitarianism attracts the guilt-ridden because it promises to relieve their guilt....It is not poverty itself that causes guilt for those who view it from a position of comfort; it is their own complacency, contrasted with the poverty of others?"
—Allan Epstein, "The Politics of Guilt"

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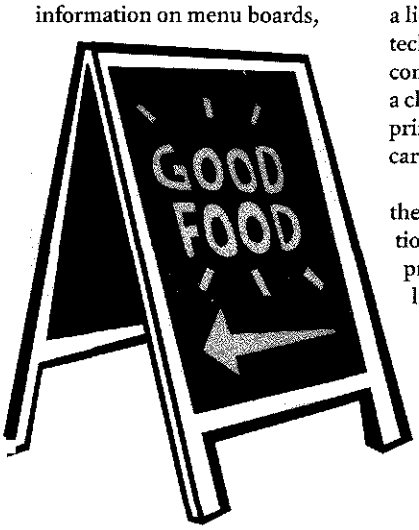
warnings about these and other obvious hazards, many members of Congress no longer trust the courts to throw out frivolous lawsuits. In April the House of Representatives approved the Protection of Lawful Commerce in Arms Act, which would block litigation aimed at holding gun makers responsible for violent crime. In June a House subcommittee held hearings on the Personal Responsibility in Food Consumption Act, which would prevent fat people from winning damages by blaming restaurants, food manufacturers, or retailers for their portliness.

Both bills have been criticized for violating the principles of federalism by interfering with cases in state courts. Defenders of the firearm bill argue that the interference is justified because litigation aimed at setting national gun control policy through the courts upsets the proper balance between federal and state authority, violates the separation of powers between the judicial and legislative branches, and threatens to infringe upon the Second Amendment.

Although the Constitution does not mention a right to buy and eat cheeseburgers, the Personal Responsibility in Food Consumption Act could be defended on some of the same grounds. Lawsuit boosters such as Banzhaf are interested not only in winning damages but in forcing restaurants to change the way they operate nationwide—by putting nutritional information on menu boards,



for example. The bill's sponsors can cite the potential impact on interstate commerce as a rationale for restricting lawsuits in state courts. Since the litigation targets are likely to be national chains, the cases may end up in federal court anyway.

Constitutional issues aside, the impending parade of bills aimed at protecting specific industries from formerly laughable lawsuits does not exactly inspire confidence in our tort system. Instead of a Responsibility in Food Consumption Act—to be followed, presumably, by a Responsibility in Gasoline Consumption Act and a Protection of Lawful Commerce in Steak Knives Act—perhaps Congress and state legislatures should consider ways to encourage responsibility in litigation.

Copyrights and printer cartridges

Static Controls

Jesse Walker

THE DIGITAL Millennium Copyright Act (DMCA) was intended to thwart music and software piracy. But the printer manufacturer Lexmark has found a novel use for the law: They've sued to prevent a competitor from making cartridges that work in Lexmark printers.

Lexmark offers two kinds of cartridges for its printers: a more expensive one that anyone can refill and a cheaper version that must be sent back to Lexmark once it's exhausted. The second model is protected not only by a licensing agreement but by a technological barrier: The company's machines contain a chip that prevent them from printing from an unauthorized cartridge.

But when Mark Perkel of the Electronic Frontier Foundation (EFF) bought one of their printers, no one mentioned the licensing agreement until the product arrived. The document declared that merely by using the already-purchased product, Perkel had agreed to the license, and it provided a phone number to call if he didn't want to accept the terms.

Four times he dialed that number, and four times he reached a message saying that the extension did not exist. Perkel ended up calling the sales department instead, where a representative informed him that the license was not, in fact, a binding agreement.

Enter Static Control Components, a North Carolina company that put one of those Lexmark printers to a rather different use: It took out the chip, figured out how it worked, and started offering "Smartek" chips of its own. Armed with this product, its customers were able to forgo sending Lexmark $144 or more for a new cartridge. Instead they could refill and reuse their old cartridges—an outcome that is not merely cheaper but more environmentally benign.

Lexmark sued Static Control for violating the DMCA, which declares, "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." For Static Control and the EFF, which filed an amicus brief in the case, this was mission creep: The language in the law was meant to prevent software piracy, they argued, not efforts to make different companies' hardware compatible with each other. Indeed, they claimed, the latter are exempt from the law's restriction. Lexmark disagreed, and in March a U.S. district court ruled in its favor.

Static Control has appealed the decision, while simultaneously filing an antitrust suit against its rival for trying to "monopolize the market for toner cartridges that are used in Lexmark printers." Meanwhile, no one has been sued for violating the agreement that comes shipped with each printer. Lexmark has, however, restored the errant phone extension.

Fighting raves, squelching speech

The Chill Is On

Jacob Sullum

WHEN SEN. JOSEPH Biden (D-Del.) introduced his anti-rave »

Quotes

"This magazine does everything well: culture, politics, religion, philosophy, and while other mags redesign to simplify and commercialize, **reason**'s redesign actually made it better."

—from "The 50 Best Magazines," an article in the June 12 *Chicago Tribune*. **reason** was ranked number 21.

"They are a very tempting car. Just as Monica tempted Clinton, they will tempt you."

—Iraqi auto dealer Marwan Shaban on the Toyota Land Cruiser, locally dubbed "the Monica," in the June 4 *Detroit Free Press*.

Source

The First Amendment is surprisingly compact when you consider all it covers: freedom of speech and the press, the prohibition of establishment of religion, the exercise of religious liberty, and the rights of assembly and petition. The body of law based on those few words is not so compact, which is why the Freedom Forum and Vanderbilt University established the First Amendment Center Online. You can find links to seminal cases organized by topic, analytical essays, weekly columns, and current news items at www.fac.org.

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Brickbats

Jake Brown disliked the bike racks around Philadelphia's Independence Hall, so one day while eating lunch on a nearby bench he propped up a sign saying "Free Independence Hall" next to him. A park ranger told him to get rid of the sign, and when Brown asked about his First Amendment rights, the ranger replied, "This is a First Amendment–free zone." Following complaints from the American Civil Liberties Union, the government now concedes that the First Amendment applies to Independence Hall.

Sheriff Mike Hale of Jefferson County, Alabama, directed one of his deputies to get rid of evidence in a case that had been closed. Among the items the deputy burned was $2,100 in cash.

Rumors ran rampant when several students at New York City's public Intermediate School 164 cut classes. Some said they had attended a party where students had sex. When the children returned to school, school officials reportedly demanded that the girls, but not the boys, undergo STD and pregnancy tests and show them the results before they would be allowed to return to classes.

Party members attending the national assembly of the United Malays National Organization got a special gift this year. The party of Prime Minister Mahathir Mohamad distributed copies of Henry Ford's anti-Semitic 1920 book *The International Jew*. Maybe Mahathir doesn't know Ford is dead and is hoping to attract foreign investment.

Ad designer Grandison Taber met garbage man Larry Heyes and decided the man would be perfect for an ad campaign to foster civic pride in New Bedford, Massachusetts. But after the ad featuring Heyes came out, someone contacted the paper about the city's new public face. It turns out that Heyes is a convicted child molester. Taber says he'll try to be *more careful in selecting the* city's next spokesperson.

The federal government has given the state of Tennessee millions of dollars for ad campaigns promoting highway safety. Where has the money gone? Well, $40,000 of it was spent on bobblehead dolls of forward Scott Hartnell that were given away to fans of Nashville's National Hockey League team, the Predators. The state also paid $22,000 for plastic fangs and ponied up $100,000 to sponsor the Predators' "Smashville" season theme.

According to a custodian at Spaulding High School in Barre, Vermont, Officer John Mott used his authority as a uniformed, on-duty police officer to gain access to the high school at 1:30 a.m. He then asked to be let into the classroom of Tom Treece, a history teacher and vocal pacifist, in order to take photos of supposedly unpatriotic school projects, most notably a poster of President Bush with duct tape over his mouth.

New York City is running a deficit, but the city council still dredged up $75,000 to organize city residents in support of rent control. The city spent $27,900 just to bus residents to Albany for a pro–rent control rally.

Charles Oliver

legislation, critics warned that it could have a chilling effect on unpopular speech, especially criticism of the war on drugs. They were proven right barely a month after President Bush signed Biden's Illicit Drug Anti-Proliferation Act, a.k.a. the Reducing Americans' Vulnerability to Ecstasy (RAVE) Act.

In Billings, Montana, a May 30 rock concert sponsored by two drug policy reform groups was canceled on the day of the show after a local representative of the Drug Enforcement Administration (DEA) told the venue's owners they could be liable under the new law if anyone smoked pot at the event. The RAVE Act prohibits "knowingly opening, maintaining, managing, controlling, renting, leasing, making available for use, or profiting from any place for the purpose of manufacturing, distributing, or using any controlled substance." Violators are subject to $250,000 or more in civil penalties, a criminal fine of up to $500,000, and a prison sentence of up to 20 years.

The manager of the Eagles Lodge in Billings, where the National Organization for the Reform of Marijuana Laws and Students for a Sensible Drug Policy planned to hold a fundraising concert, said a local DEA agent approached her on May 30, waving a copy of the law. "He freaked me out," she told the Drug Reform Coordination Network. "He didn't tell us we couldn't have the event, but he showed me the law and told us what could happen if we did. I talked to our trustees, they talked to our lawyers, and our lawyers said not to risk it, so we canceled."

Jeff Sweetin, special agent in charge of the DEA's Rocky Mountain Division, defended the warning in an interview with *The Billings Outpost*. But he conceded that "it certainly doesn't look very good." Attempting to improve appearances, the DEA announced in a June 20 press release that it is "committed to responsible enforcement of this law, which will shield innocent businesses from criminal liability for incidental drug use by patrons."

Summer of summonses

That's the Ticket

Julian Sanchez

NEW YORKERS WERE sorely vexed this summer by an alleged "ticketing blitz," a spate of summonses issued for violations of obscure or trivial laws in what many see as an attempt to fill dwindling city coffers. Even the people handing out the tickets are expressing frustration: New York City's Patrolmen's Benevolent Association launched a "Don't Blame the Cop" ad campaign to defuse public anger over "revenue-raising disguised as traffic control and other quality-of-life matters."

While the raw number of total summonses issued in 2003 had actually decreased relative to the previous year as of May, anecdotal evidence suggests police are being pressured to issue tickets in an attempt to meet quotas. Of 111 smoking-related tickets handed out during the first month of New York's new ban on smoking in bars and restaurants, 86 were for indirect violations, such as keeping ashtrays in public view or failing to post a "No Smoking" sign.

As press accounts in the New York *Daily News* and elsewhere recounted, Pedro Nazario was cited for feeding pigeons, while Crystal Rivera, who was six months pregnant at the time, received a ticket for sitting on subway steps. Barbers Kim Phann and Bruce Rosaro were ticketed for "loitering" in

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Balance Sheet

Jeff A. Taylor

Texas Two-Step

A dozen of 38 people convicted in the infamous Tulia, Texas, drug sweep of 1999 are freed from prison pending further investigation into the case. They appear to be guilty of being from the wrong side of town.

Pub Fair

The House of Commons votes to rid Britain of early "last call" regs that encouraged people to drink as much as they could, as fast as they could, before being turned out.

Book Markers

The U.S. Government Printing Office shuts down 13 retail locations across the country, noting that online orders can fill the need. Only Washington, D.C., will keep stores, as the city's interns must be kept busy.

Big Easy

A New Orleans ban on sidewalk bookselling is struck down when a federal judge notes that the law impinges on First Amendment rights to free speech.

Cleansing Agents

The General Accounting Office finds that the number of FBI field agents tasked with drug crimes has been cut nearly in half, from 1,400 in the fall of 2001 to around 800 in spring '03. New drug investigations also fell from 1,825 in 2000 to 944 in 2002.

Wet Bar

South Carolina reverses decades of blue law tradition and allows retail beer and wine sales on Sunday. Bars and restaurants in S.C. have served on Sunday since 1993.

Bell Ringer

Pacific Bell Internet Services fights Recording Industry Association of America legal tactics, arguing that nothing in the Digital Millennium Copyright Act allows the RIAA to issue "shotgun" subpoenas of Net users. These raise "constitutional questions that need to be decided by the courts," PacBell says.

Read-Write Error

A Massachusetts school superintendent making $156K a year fails to pass a basic literacy test after three tries. The state education commissioner won't say how many chances Wilfredo T. Laboy will get.

Tracking Adjustment

The Homeland Security Department's inspector general finds that using the department's "air interdiction" center to track down Democratic members of the Texas legislature was "appropriate." Turns out that such tracking is a "nominal" use of federal resources.

Name Gamed

The U.S. Court of Appeals for the District of Columbia Circuit backs the Bush administration's assertion that it can keep secret the names of hundreds detained as part of 9/11 investigations.

Twisted Norm

Researchers from Johns Hopkins University find that over half of Zimbabwean women believe wife beating is OK. Transgressions like burning dinner or leaving the house without the husband's permission can justify a beating, a survey of 5,907 women between the ages of 15–49 reveals.

Tally Whoa

Computerized voting systems are only as good as their security, and experts at the Information Security Institute find that isn't so good. "A 15-year-old computer enthusiast" could make fake cards allowing every voter to cast multiple ballots, they warn.

Busting CAPPS

Two MIT grad students find that the airlines' Computer Assisted Passenger Pre-Screening System (CAPPS) provides worse security than utterly random searches would. Terrorists could "game" their CAPPS profiles with as few as six flights.

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Data

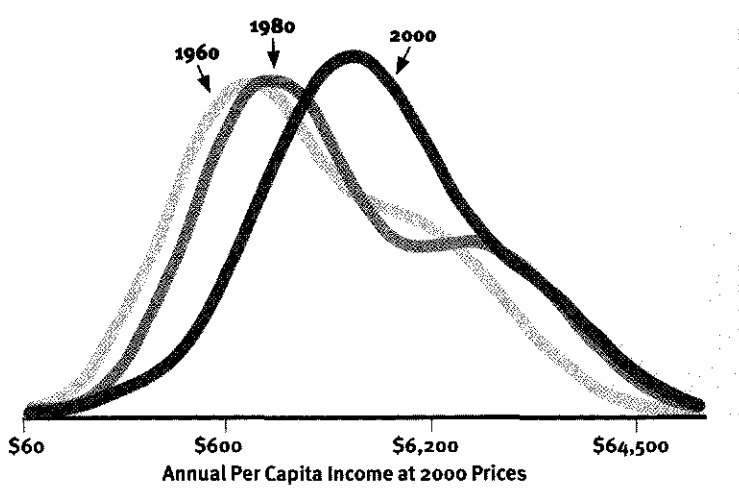
The Poor Get Richer

Julian Sanchez

You know the catechism: The rich are getting richer, the poor are getting poorer, and globalization is exacerbating inequality at an unprecedented rate. The message is hard to avoid. Representative of the conventional wisdom is the claim, in a background paper for the United Nations' 1999 Human Development report, that "the gap between the rich and poor countries and between rich and poor people continues to widen."

But the conventional wisdom is dead wrong, according to former World Bank economist Surjit S. Bhalla. In his recent book *Imagine There's No Country* (Institute for International Economics), Bhalla calculated the world distribution of income at 20-year intervals during the last half-century, adjusting for purchasing power. He found that the world as a whole was getting richer and that the poor were doing it faster than the wealthy. Bhalla's figures demonstrate that during the era of globalization, the world has become not merely more prosperous but also dramatically more egalitarian. *Now* what are we supposed to protest?

World Income Distribution, 1960, 1980, and 2000



Source: Surjit S. Bhalla

› front of their own barbershop. James Smith got a summons for "obstructing" a turnstile when he stopped to pick up a few coins he'd dropped on his way to the subway.

Jesse Taveras was hit with a $50 fine as punishment for his "unauthorized use of a milk crate" after the 19-year-old was caught sitting on one. Taveras told reporters the partner of the officer who ticketed him offered some consoling words: "It's not a big deal. The judge will throw it out anyway."

New York's arcane traffic laws provide a seemingly endless source of tickets. Nicole Rapaccuiolo totaled her car only blocks from her Queens home. When she left it parked in front of her house pending a visit from an insurance adjuster, she was ticketed for having a broken headlight on three consecutive days. Erika Gross was pulled over and handed two speeding tickets at once: One charged her with speeding in a posted zone, the other for speeding in an unposted zone less than two miles down the road. Jacob Walzer owes the city $55 for his "improperly displayed plates" because he never bothered to remove a license plate frame bearing the name of the dealership where he'd purchased the car.

There's money in trash as well. Sanitation cops reportedly handed out a flurry of tickets after roaming through one Queens neighborhood picking through trash bags in search of stray recyclables mixed with ordinary garbage. Lorena DeLuca was even fined for putting her trash in the blue plastic bags formerly used for recycling glass, even though New York no longer recycles glass.

An informal survey conducted by the *Daily News* found that 65 percent of cops whose duties include writing summonses report feeling either "some" or "a lot" of pressure to issue more tickets. Of 95 officers asked whether they had written tickets they knew would be thrown out of court (if challenged), more than a third replied that they had. ▯

Sidestepping the Constitution

Jury-Rigged

Kerry Howley

THE FEDERAL government has transformed grand juries into "inquisitorial bulldozers that run roughshod over the constitutional rights of citizens," warns a new study from the Cato Institute. The study argues that grand juries, once checks on prosecutorial power, have become an extension of the investigative process.

Historically, grand juries empowered citizens to combat overzealous criminal prosecution. In colonial Boston, juries regularly refused to indict citizens accused of violating the Stamp Act and other unpopular policies.

Today, law enforcement uses the grand jury system to sidestep constitutional limitations, such as bans on unreasonable seizures and compulsory self-incrimination. Suspect won't talk? Try a grand jury subpoena. No search warrant or probable cause? No problem—grand juries have nearly unlimited power to obtain private documents, as the public learned when Kenneth Starr demanded that a Washington, D.C., bookstore dig up records of Monica Lewinsky's purchases.

Traditionally, the wide reach of this subpoena power has been mitigated by the secrecy of grand jury proceedings: Any testimony or documents, however sketchily obtained, as least stayed within the courtroom. The PATRIOT

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Act swept away this limitation, granting federal prosecutors the right to share grand jury material with a host of government agencies.

Timothy Lynch, co-author of the Cato report and director of Cato's Project on Criminal Justice, warns that in the event of another terrorist attack, "we could see Congress rush to pass a PATRIOT II–type package without serious deliberation." Lynch notes that the FBI "has always wanted its agents to have subpoena powers, even though it is startling how much power they already have." ▮

PETA praises McDonald's

Meat Markets

Julian Sanchez

IT'S NOT OFTEN that you find People for the Ethical Treatment of Animals (PETA) praising McDonald's. Yet that's what has happened as the nation's top burger peddler has begun to show a more animal-friendly face. The company has begun funding animal welfare research, and in June announced that it will require its beef suppliers to phase out the use of certain growth-promoting antibiotics.

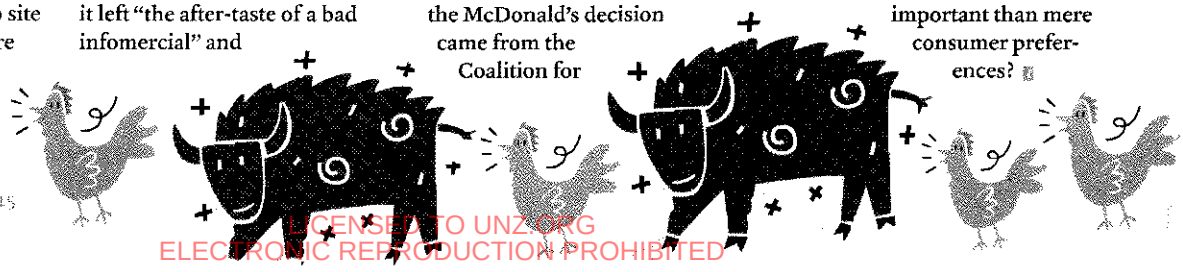
Groups such as the American Medical Association and the World Health Organization have long worried that the use of human antibiotics to promote growth in livestock could turn cattle yards into breeding grounds for drug-resistant bacteria. But PETA spokesperson Bruce Friedrich applauds the McDonald's decision as a "very good thing" for a different reason: If ranchers reduce their reliance on drugs, they may have to compensate by improving conditions for their livestock

Don't think that PETA and the fast food industry are on cozy terms. In July, the group filed suit against KFC, alleging that the chicken chain had made fraudulent claims on its Web site concerning its animal welfare policies.

Still, even occasional praise of fast food companies doesn't sit well with some of PETA's allies, who seem to regard animal rights as a wholly owned subsidiary of the broader anticapitalist movement. When PETA produced a video last year encouraging supporters to patronize Burger King and purchase the vegetarian BK Veggie, the glossy anticonsumerist magazine *Adbusters* sniffed that it left "the after-taste of a bad infomercial" and wondered whether PETA had "gone too far."

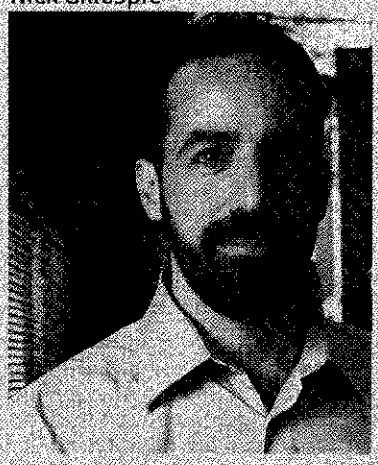
PETA's Friedrich has little patience for such criticisms. "If you're not going to say nice things about them no matter what," he says, "corporations have no reason to ever change their practices."

The harshest response to the McDonald's decision came from the Coalition for Animal Health, whose members include the major livestock trade organizations. In a press release issued shortly after the McDonald's announcement, the group attacked the move as "market-based, rather than science-based policy." The drugs in question were government approved, the coalition noted. Wasn't that more important than mere consumer preferences? ▮



Romancing *Wired* Magazine

Nick Gillespie



Gary Wolf, photo by Brennan Cavanaugh

Gary Wolf

As a defining media presence of the 1990s, *Wired* did more than change the way magazines looked (though it certainly did that, in vivid Day-Glo colors). The brainchild of editor/publisher Louis Rossetto, *Wired* gave the world a way of talking about how digital culture is revolutionizing society and radically reshaping human destiny. *Wired: A Romance* (Random House), by Gary Wolf, tells the story of how Rossetto and his partner Jane Metcalfe put their path-breaking publication together and how they were ousted just a few short years later.

Partly a smart social history of the '90s and partly a high-stakes business tale, the book richly evokes the tech-bubble world and its collapse. The 41-year-old Wolf, who worked at *Wired* in its early days, lives in San Francisco and is the coauthor, with Joey Anuff, of *Dumb Money: Adventures of a Day Trader*. Still a *Wired* contributing editor, he is currently at work on a novel.

Editor-in-Chief Nick Gillespie interviewed Wolf via e-mail in July.

Q: You call your book "a romance." Why?

A: I use "romance" in a novelist's sense, to refer to the uncanny, the supernatural. Ghosts and demons are not permissible in journalism, but there are other forces in the world that hauntingly take possession of individuals. Ideas—powerful new ideas—often appear unexpectedly in several places at once. Like ghosts, they are "in the air."

Once they begin to work, they can have an uncanny, almost demonic effect, causing otherwise rational people to act strangely. The *Wired* book is a romance mainly in this sense: It traces the effect of a fantastic idea, the idea that computers will make every existing authority obsolete, as it worked through and upon the man, Louis Rossetto, who conjured it up.

Q: Did *Wired* chronicle digital culture or did it effectively create it?

A: *Wired* did not create digital culture. But that does not mean it was "merely" a chronicle. By presenting digital culture in a powerful way, by naming it and packaging it, *Wired* created a feedback loop that had an enormous effect on its development.

Q: What's *Wired*'s most important legacy?

A: The original idea of *Wired* had nothing to do with the tech bubble, and as the pain of the bubble's collapse fades, this idea will be recovered as *Wired*'s most interesting legacy. The idea is that existing authorities are undermined by computer technologies. Now, this may turn out to be false. Perhaps computers will only strengthen the status quo. I doubt it, but I admit that it is too soon to pronounce a verdict. My book tells the story of *Wired* and its idea, but does not resolve everything.

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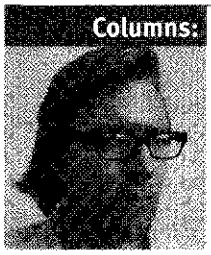

Liberty Belle

France's new libertarian youth leader

MOST FRENCH PEOPLE devote their summers to quintessentially Gallic pursuits: celebrating Bastille Day, spending some of their mandatory eight-week vacation time, going on strike.

But Sabine Herold, to put it mildly, is not your typical Frog. Herold, the 22-year-old leader of *Liberté, J'ecris Ton Nom* (Freedom, I Write Your Name), has in the last few months emerged as the massively popular and highly photogenic leader of—*zut!*—a burgeoning pro-market, pro-American counterculture in France. Earning comparisons to Joan of Arc, Brigitte Bardot (!), and Margaret Thatcher in the panting British press, she represents something French politics hasn't seen in years: a public figure eager to take on the country's endlessly striking unions.

It is startling to hear any Parisienne, let alone a college student, drop references to F.A. Hayek in casual conversation, describe Communists as "disgusting," or lead pro-war demonstrations in front of the American Embassy. Herold is fond of issuing heretical statements guaranteed to make any good *fonctionnaire*'s skin crawl.

"I think you have no legitimacy [as a politician] if you've never worked," she tells me during a phone interview in July. "I don't want to be a kind of apparatchik. I think if you're not able to do things for yourself, or show that you can help a company, how can you help the state?" She supports gay marriage and legalizing pot, reputedly whips up a mean five-course meal, and uses the word *libertarian* as the highest possible compliment.

Still, no amount of contrarian spunk could have prepared Herold for the summer that has just passed. On June 15, in the midst of crippling transportation and education strikes against Prime Minister Jean-Pierre Raffarin's plan to reform France's ailing pension system, Herold led an anti-union rally that shocked her and the rest of the country by drawing 80,000 angry people. In a realm whose coin is the demonstration, this was reportedly the largest right-of-center protest since 1984, giving some optimists reason to declare it a turning point in public attitudes toward the Never-Ending Strike.

"We were so surprised to see all these people who just came to say that they were fed up with the unions and fed up with the strikes," Herold remembers, still amazed at the response.

When the pension-reform strikes subsequently fizzled, Herold was immediately feted by Fleet Street. (To date, British newspapers have given her far more coverage than their French counterparts have.) *Daily Telegraph* Publisher Conrad Black brought the Young Right Hope across the Channel for a whirlwind tour of meet-and-greets with the U.K.'s top Tories. (Lady Thatcher, regrettably, canceled at the last minute to attend to her dying husband.)

Some of the most prominent French politicians soon followed suit, eager to learn more about Herold's dynamic young organization. She also found time last summer to graduate from the elite Institut de Science Politique, study for entrance exams to get into business school, and celebrate her 22nd birthday.

"It's been really, really weird," she says, laughing.

Herold laughs easily and often. And, just maybe, the long-silent French minority that shares her views finally has a reason to crack a wary smile of its own: For the first time in memory, they have an influential ally in Prime Minister Raffarin. "He's a libertarian," Herold insists, in excellent, accented English. "The problem is that in his government he has too many other

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people more conservative, so he can't have a real libertarian policy."

Still, by most accounts, Herold's anti-strike revolt has given Raffarin extra fiber. "The government has stood firm on pension reform," the *International Herald-Tribune* reported in July, citing Herold's protests. "Now, analysts say, it may be emboldened to push for further economic changes, such as stepped-up privatization of state-owned companies, and efforts to improve the workings of the labor market. Under discussion are reductions in the social security charges levied on employers, which have already been cut back sharply in recent years for some workers."

Despite these impressive early results, Herold's long-term task is truly Sisyphean: Chip away at the ossified paternalism in French and European governance, convince a nation that treasures its generous safety net that it can't last, and confront an entrenched culture that views noisome public sector strikes as the preferred method for conflict resolution.

"It's annoying," Herold says, "because in France, we start striking, and then we go to negotiate. It would be so much more interesting to go negotiate first, and then if nothing happens, just go on strike. I don't know, maybe it's an old love of the Revolution, or that people missed World War II and they want to be in another kind of Resistance."

So how did the elite, conformist French education system produce such a cheery iconoclast? Herold's mom is a schoolteacher, and her dad's a professor, from a village near the northern Champagne-producing city of Reims. Their child says she was "almost apolitical" upon arriving at the "mostly left-wing" Science-Po in Paris.

She attributes her political evolution to a professor here, a student there, and mostly a lot of reading: Raymond Aron, Alexis de Tocqueville, and her beloved Hayek. She joined Liberté, J'Ecris Ton Nom two years ago, discovering some intellectual soul mates, but mostly her fellow students considered her "kind of a lost cause."

"Most of the young people in France think that nice people should be left-wing," Herold says, "since we've all been to the same kind of schools, which are state schools, and then in the media there's only one way of thinking."

> "In France, we start striking, and then we go to negotiate. It would be so much more interesting to go negotiate first."

Those who have been busy these last months calling her countrymen "weasels" are surely familiar with the notion that the top-down French society tends to produce monochromatic views at odds with the White House. Herold, who considers herself a strong patriot, bristles at the tension, but lays much of the blame on the French government's anti-war policies and the broad-based anti-Yankee sentiment behind it.

"I think one of the big problems in France is that we are anti-American without knowing why," she says. "It's just kind of a natural thing. I mean so many people I meet are anti-war, and they'll just say that Bush is stupid and the Americans are awful imperialists. It's just their typical answer, and they never think of why. That's crazy. I think it's because we're all being brought up like that, especially at school. It's incredible how we're taught about America—they're always explaining, for example in geography or history courses, how Americans are imperialistic."

If Herold sometimes sounds rigid (example: "I think people should not talk about politics on stupid TV shows"), consider that she's only 22, that she's saying much of this with a chuckle, and that this is her first go-round with intense media coverage. (She describes one of Fleet Street's profiles of her as "not very good reporting...because there are many things I didn't say, or didn't say in that way, or [that were] just out of context.")

Rigidity is one thing, but being blasé about having the Communist Party as a major player in the ruling government coalition (as it was until last year), or having a cultural establishment dominated by unrepentant former Maoists, is quite another.

What's next? Herold plans two years of business school, followed by a job in the private sector, maybe some more travel, and then who knows? In the meantime, there are rumors of more strikes in the fall, which is when we should find out whether Herold and the Liberté, J'Ecris Ton Nom movement are the beginning of a lasting anti-strike revolt—and the vanguard of a libertarian youth movement in France. ▯

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Bipartistan Coulterism

Who's meaner, conservatives or liberals?

LAST JUNE THE Democratic National Committee sponsored an ad portraying the president as Frankenstein creating a monster for a federal judgeship. This, Fox News host Sean Hannity declared, was a typical example of Democratic demonization. "They're obviously being pretty mean-spirited here," he said, "as they usually are."

Confronted with this accusation, Democratic consultant Victor Kamber parried, "It's the Republicans that have been the hate mongers in the past campaigns." Hannity's mild-mannered liberal co-host Alan Colmes inquired of another guest, "You think Democrats are a lot meaner than Republicans?"

Actually, conservatives have been doing quite well in the meanness sweepstakes, thanks largely to the impressive efforts of Ann Coulter. The right-wing pundit's latest book, *Treason: Liberal Treachery From the Cold War to the War on Terrorism*, attempts, among other things, to rehabilitate Sen. Joe McCarthy.

It opens with guns blazing: "Liberals have a preternatural gift for striking a position on the side of treason. You could be talking about Scrabble and they would instantly leap to the anti-American position. Everyone says liberals love America, too. No they don't. Whenever the nation is under attack, from within or without, liberals side with the enemy. This is their essence." And so it goes, for nearly 300 more pages: "They are either traitors or idiots, and on the matter of America's self-preservation, the difference is irrelevant. Fifty years of treason hasn't slowed them down."

Coulter's sweeping generalizations, which can't distinguish Democratic Cold Warriors from Democratic fellow travelers, have alienated even some of her usual supporters (though not Hannity). But none of the nastiness or hysteria in *Treason* is new. Coulter has, after all, jokingly wished assassination on Secretary of Transportation Norman Mineta and not-so-jokingly accused Mineta of "burning with hatred for America" because he opposes racial profiling in airport screening. Her long rap sheet of hateful remarks includes this gem from a speech last year to the Conservative Political Action Committee: "We need to execute people like John Walker in order to physically intimidate liberals by making them realize that they could be killed, too."

I've long been baffled to see so many conservatives defend Coulter as a fiery and witty, if over-the-top, polemicist. Reviewing her previous book, *Slander: Liberal Lies About the American Right*, in *The Weekly Standard*, Christopher Caldwell lauded the "Menckenesque invective" of such aperçus as: "Even Islamic terrorists don't hate America like liberals do. They don't have the energy. If they had that much energy, they'd have indoor plumbing by now." There's no accounting for taste, I suppose; but even if you regard Coulter's rhetoric as funny, her consistent demonization of her opponents and her constant equation of dissent with treachery are not.

When Coulter appeared on *Hannity and Colmes* to discuss *Treason*, Colmes pressed her on the subject of which liberals alive today she would accuse of treason. "Keep talking," she replied. "I might be able to point the finger at you."

Just her twisted sense of humor? Coulter sounded entirely serious when she went on to query Colmes about his opposition to the war in Iraq and his concern that the war on terrorism may endanger civil liberties—or, as she put

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it, that "we're in the middle of a civil liberties emergency every time John Ashcroft talks to a Muslim."

Such rhetoric is not unique on the right. Last November, when Senate Minority Leader Tom Daschle complained about being attacked by radio host Rush Limbaugh, he was widely ridiculed for "whining." But Limbaugh's denunciations of Daschle were in fact fairly extreme.

"What more do you want to do to destroy this country than what you've already tried?" he inquired after Daschle criticized the Bush administration's conduct of the war on terrorism. "It is unconscionable what this man has done! This stuff gets broadcast around the world, Senator. What do you want your nickname to be? Hanoi Tom? Tokyo Tom?"

This is nasty stuff, even if it's meant to be somewhat tongue in cheek, and it gives liberals cause to cry that conservatism has been taken over by shrill hate mongers. Sure, they'll admit, the left has its own nasties such as Michael Moore—but those, they insist, are few and far between, marginal figures well to the left of the liberal mainstream. Moore is not considered a liberal icon, is not invited to speak at conferences of liberal political action committees, and does not appear regularly on television as a serious political pundit.

True enough. But even in the liberal mainstream, a lot of left-leaning commentary has a streak of Coulteresque nastiness.

If the conservative paradigm is that liberals are unpatriotic, if not downright un-American (and possibly also godless and libertine), then the liberal paradigm is that conservatives are at best uncompassionate and at worst bigots and fascists. Hannity has a point when he says that people who are outraged by Coulter's crude stereotyping of Democrats often don't hesitate to suggest that "the Republicans want to poison the air, water, kill children and throw children on the streets." Not to mention abuse the elderly and burn down black churches.

Hyperbole? Not exactly. Think back to the infamous ad from the 2000 presidential campaign in which the daughter of James Byrd Jr., the black Texas man who was deliberately dragged to his death behind a car, said she felt as if her father was killed all over again when Gov. Bush refused to sign the state's hate crimes law. Or to the

Even in the liberal mainstream, a lot of left-leaning commentary has a streak of Coulteresque nastiness.

cartoon on the Web site of the Democratic National Committee showing Bush shoving a wheelchair-bound granny down the edge of a Social Security trust fund graph. Or to a cartoon in the New York *Daily News* that showed Gale Norton, Bush's nominee to be secretary of the interior, declaring, "Leave no child alive."

The rhetoric gets especially noxious on racial issues. Some years ago, Al Gore said this about critics of affirmative action: "I've heard those who say we have a colorblind society. They use their color blind the way duck hunters use a duck blind—they hide behind it and hope the ducks won't notice."

More recently, after the Supreme Court ruling upholding affirmative action, *New York Times* columnist Maureen Dowd said this about Clarence Thomas' dissenting opinion: "The dissent is a clinical study of a man who has been driven barking mad by the beneficial treatment he has received." Thomas, of course, has been the target of exceptionally nasty rhetoric from his critics; in 1994, on the PBS show *To the Contrary*, Julianne Malveaux remarked, "I hope that his wife feeds him lots of eggs and butter and he dies early like many black men do, of heart disease."

When it comes to mean-spirited rhetoric, both left and right are better at seeing the speck in the other's eye than the log in their own. This sets off a vicious cycle, in which each side feels justified in hurling vicious slurs because the other camp is even worse.

In a recent, cautious critique of Coulter, conservative writer David Horowitz declared that he enjoyed her attacks on liberals because he felt they were well-deserved: "No one wields the verbal knife more ruthlessly than so-called liberal pundits like Joe Conason, to cite but one example....If people Joe Conason admired were the objects of acid Coulterisms, so much the better." A 2002 *Wall Street Journal* piece lauded Coulter as the right's answer to Lenny Bruce, Louis Farrakhan, and Angela Davis. Meanwhile, liberals talk about the need to develop programming to counter invective-filled right-wing talk radio.

This endless shouting match—"You're mean!" "No, you're mean! And since you're being mean we'll be even meaner!"—can be entertaining at times. But it drowns out serious arguments.

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Denial of Service

The battle over AmeriCorps

"Enemies will use any weapon at their disposal," warned Sen. John McCain (R-Ariz.), in their ideological "attack on things that we believe in."

The senator was referring not to Ba'athist hard-liners but to the insidious congressional opponents of AmeriCorps. The Clinton-spawned Works Progress Administration for the new millennium was denied $100 million in emergency funding by a narrow House vote just before the August recess.

A spate of articles, including a *New York Times* op-ed by literary establishment darling Dave Eggers, quickly condemned such stinginess. Listening to these complaints, you might think the AmeriCorps budget had actually been cut. The reality is slightly more complex.

It turns out AmeriCorps' parent corporation had violated federal law by approving 20,000 more volunteers—and scholarships—than Congress had funded, spending $64 million it didn't have. The causes of this snafu included "little or no communication among key Corporation executives, too much flexibility given to grantees regarding enrollments, and unreliable data on the number of AmeriCorps participants," according to the General Accounting Office (GAO).

Despite what one Office of Management and Budget spokesman called "Enron-like" accounting, Congress increased AmeriCorps funding by $42 million in 2003. So how can activists at SaveAmericorps.org say that "Congress cut funding from $240 million to $175 million in Federal Fiscal Year 2003"? The misleading $175 million figure includes only the budget line item for grants and ignores appropriations for, among other things, a trust to help pay off that illegal debt.

The fiscal year 2004 appropriation raises AmeriCorps' budget by another 10 percent, but until that money kicks in, officials say it will be unable to fill 20,000 of its 50,000 volunteer slots without an emergency appropriation. Let's put this "drastic," "crippling" reduction in perspective.

Assume, implausibly, that every one of those 20,000 workers is a full-time volunteer who completes the full 1,700 hours of AmeriCorps service, instead of bailing or being fired after resources have already been spent training him, as was the case for a median of 39 percent of volunteers across 24 AmeriCorps programs the GAO examined in 1997. Assume that all of them are deterred from volunteering by the absence of AmeriCorps funds, even though some are teachers or teaching assistants who draw an independent salary. The Bureau of Labor Statistics reported that in the past year 59 million Americans volunteered a mean 143 hours each; other surveys put the figure even higher. The AmeriCorps cuts then represent about four-tenths of 1 percent of total American volunteer hours.

This is not a deadweight loss. AmeriCorps pays some volunteers who'd probably do at least some work for free. It also diverts private and state funds to programs that bear its imprimatur.

What sort of programs? Well, McCain, who hopes AmeriCorps will encourage participants to become politically involved, seems to be getting his wish. In 1995 it gave a $1.1 million grant to the Association of Community Organizations for Reform Now, a group whose activities include lobbying for "living wages" and subsidized low-income housing. (The grant eventually had to be returned.) Teachers and tutors undergo sensitivity training in which they identify themselves as economic, racial, and religious "oppressors" or "oppressed." AmeriCorps volunteers have also done busywork for a variety of federal agencies and bought toy guns back from toddlers.

AmeriCorps volunteers do accomplish some genuine good. But like the "national greatness" conservatives, many AmeriCorps boosters seem more interested in the grand sense of national community the program is meant to inspire. If it weren't for AmeriCorps, after all, young people might decide they're perfectly capable of giving back to their communities without the assistance or direction of the federal government. And wouldn't that be a tragedy? ■

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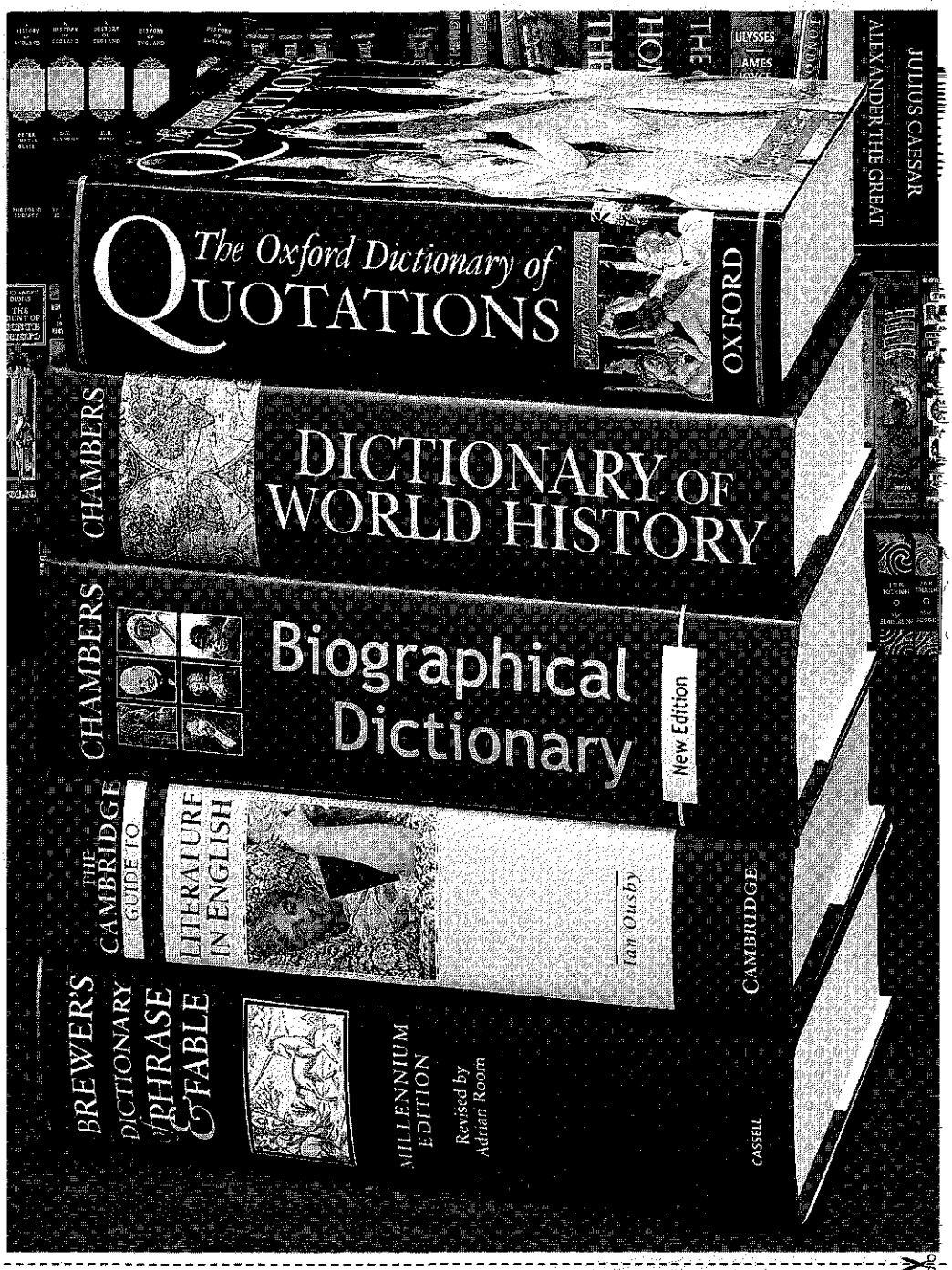

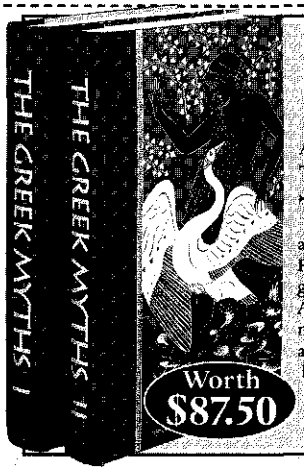

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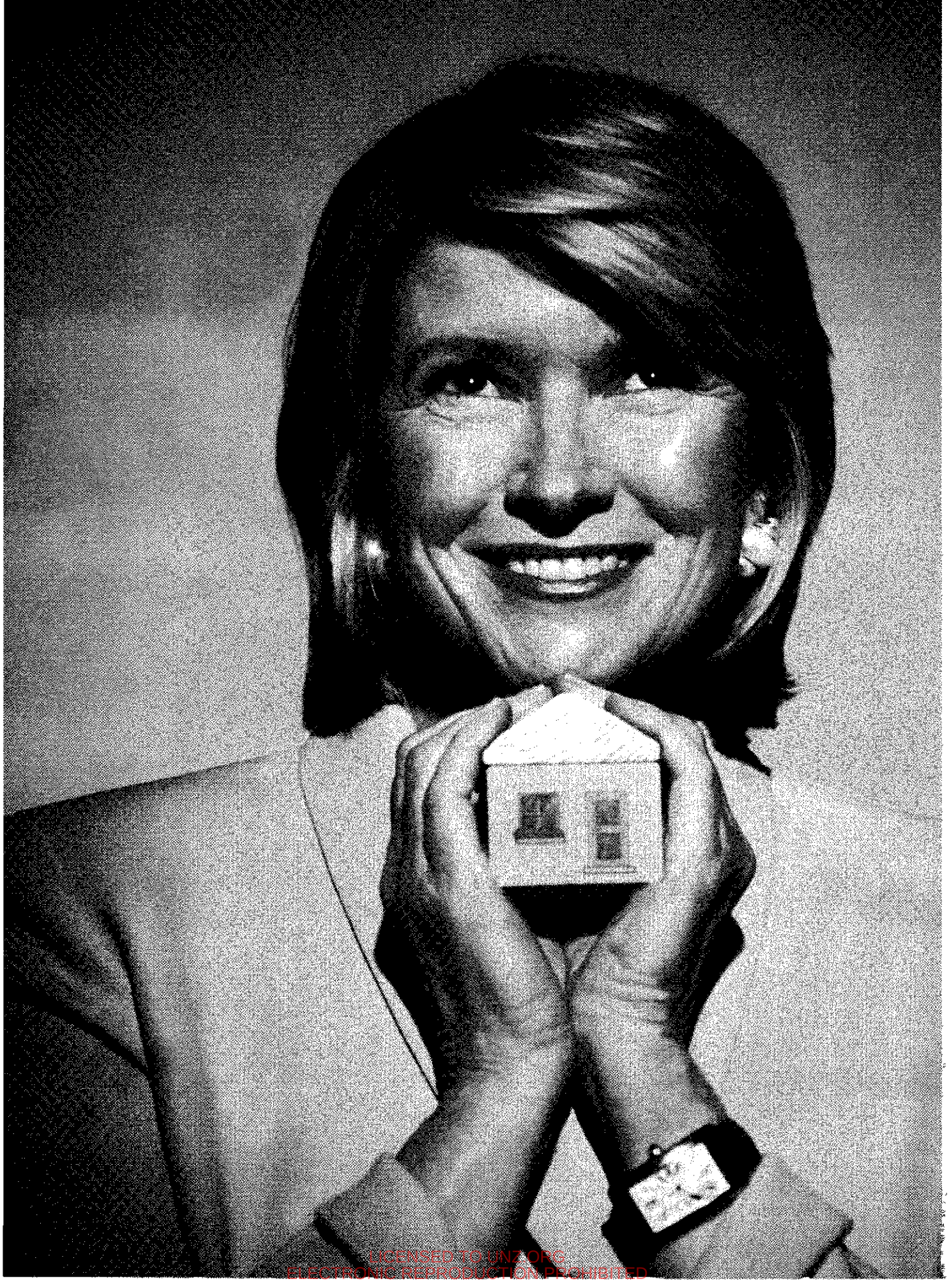

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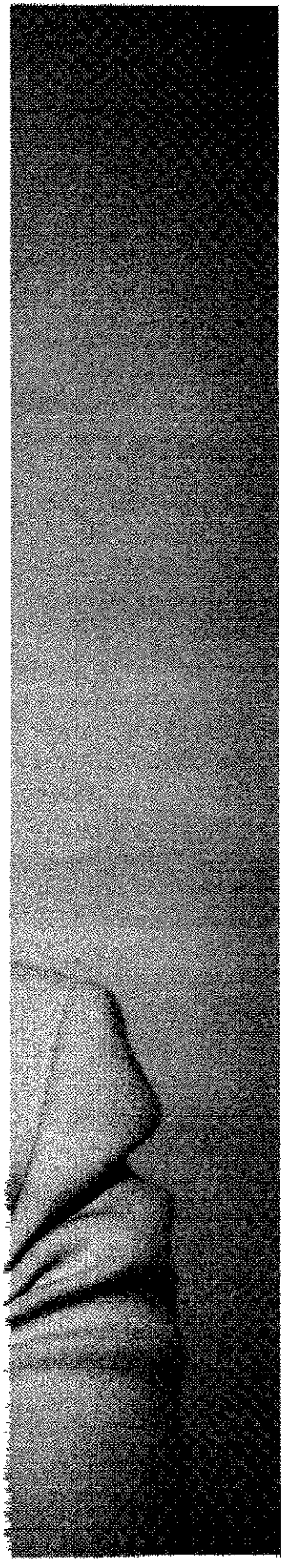

Martha Stewart, © Steve Double / Retna Ltd. USA

St. Martha

Why Martha Stewart should go to heaven and the SEC should go to hell.

Michael McMenamin

JUNE DID NOT bring much sunshine for New York City or good news for Martha Stewart. After twisting in the wind for nearly a year and a half, the Diva of Domesticity was sued for insider trading by the Securities and Exchange Commission (SEC) and indicted for securities fraud and obstruction of justice by the Department of Justice.

Those who are salivating over Stewart's demise should put down their forks. In early 2002, when she was first questioned by the feds, all the news outlets reported speculation, based on anonymous government sources, that she had sold the last remnant of her ImClone stock on December 27, 2001, because her buddy, ImClone founder and CEO Sam Waksal, had told her that the Food and Drug Administration was about to reject an application for Erbitux, the company's highly touted cancer drug. The news reports also suggested that she had lied to the feds about Waksal's tip. But as the government now tacitly admits, neither of these allegations is true. That fact helps explain why the feds waited until June 2003 to bring charges: They had trouble finding anything to pin on Stewart.

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Stewart's crime is claiming to be innocent of a crime with which she was never charged.

The most serious criminal charge against her is not perjury or insider trading but securities fraud, based on the fact that she denied to the press, personally and through her lawyers, that she had engaged in insider trading. This was done, the feds say, not for the purpose of clearing her name, but only to prop up the stock price of her own publicly traded company, Martha Stewart Living Omnimedia. In other words, her crime is claiming to be innocent of a crime with which she was never charged.

As for the SEC's civil case, it hinges on an elastic understanding of insider trading, an offense Congress has never defined. The justification for the ban on insider trading, which makes little economic or legal sense, is just as murky as the behavior covered by it. Given the difficulty of figuring out exactly what constitutes insider trading (let alone why it's illegal), it is entirely possible that Stewart and her lawyers weren't sure whether she had broken the rules. In any event, under existing case law, it's clear that she didn't.

What Did She Know?

All Stewart knew when she ordered the sale of her 3,928 ImClone shares was that, according to her broker, the price of the company's stock had dropped from $64 at opening to $58 under heavy selling (7.7 million shares vs. the daily average of 1.1 million), and that his clients, Sam Waksal, and his daughter, Aliza, also had been selling. The SEC charged Stewart with insider trading because her broker told her the Waksals were selling, and the Department of Justice indicted her because she denied any culpability for insider trading.

Stewart was not the only investor connected to Waksal who joined the selling mob that day. She just received the most scrutiny. There was Martha's friend, Mariana Pasternak, who was on vacation with her when all this happened and whose ex-husband coincidentally sold more than 10,000 shares of ImClone that day. He wasn't charged with insider trading. Then there were the two unnamed friends of Waksal described by *The New York Times*: One sold $600,000 of ImClone stock on December 27, while another sold ImClone stock worth $30 million on December 27 and 28. Phone records show the sales took place "almost immediately" after contact between Waksal and the sellers. The government has refused to identify these anonymous investors and so far has declined to indict or sue them for insider trading.

Finally, there were Waksal's daughter, Aliza Waksal, a 29-year-old actress, and his octogenarian father, Jack Waksal. On December 27, Sam Waksal telephoned Aliza at the ski resort where she was vacationing and told her to sell all her ImClone shares (40,000 for $2.5 million). Before government investigators questioned Aliza, Waksal told her to conceal their conversations, using the cover story that she needed the proceeds to buy an apartment (which she didn't do until seven months later, spending $1.4 million to buy it from her daddy's development company). After talking to his son, Jack Waksal sold more than 136,000 shares on December 27 and 28 for more than $8 million. Jack Waksal also lied to the government, denying that he spoke to Sam Waksal prior to selling his ImClone stock. This was before prosecutors produced phone records showing that calls between them all had taken place before the trades were made. Neither Aliza Waksal nor her grandfather has been indicted or sued for insider trading or lying to the government.

The disparate treatment of Stewart and the other ImClone investors is especially troubling

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when you consider the government's definition of insider trading and rationale for prohibiting it. The government says insider trading occurs when someone buys or sells stock based on material, nonpublic information received from an insider. While Aliza Waksal spoke directly with her father prior to her sale, Stewart knew the Waksals were selling (arguably not material information, since insider sales are not always reliable predictors of a stock's movements) only because her broker (not a true corporate insider) told her so. Although Martha tried to speak to Waksal, she was unable to get hold of him before selling her stock.

Likewise, the government says insider trading is illegal because it does "economic harm" to the market. Therefore the size of the trade must matter. Aliza Waksal avoided $630,295 in losses and her grandfather three times that, while Stewart saved only $45,000. By this measure, Aliza Waksal's sale and her grandfather's did more "economic harm."

Suppose we stretch the definition of insider trading beyond economic harm caused by the use of material, nonpublic information, and instead use the SEC's long discredited "fairness" or "level playing field" theory. According to this view, it was not fair that Martha knew the Waksals were selling before the rest of the market knew. That standard still wouldn't explain why Aliza Waksal's trade was legitimate. Stewart's excuse was that she had already told her broker she wanted to sell when the ImClone share price fell below $60, which is what happened on December 27. Aliza Waksal's excuse was that although she's an adult, she is still financially dependent on her father, so she had no choice but to do as he instructed, which included selling the stock and lying to government investigators. Which explanation sounds more plausible?

When Waksal worked out a settlement with the government, it reworded the language regarding Aliza Waksal's sale. The settlement now says Waksal "directed Aliza to sell all of her ImClone shares," and Waksal "benefited because he was her entire means of financial support." Thus Sam Waksal is guilty of his adult daughter's insider trading because if she hadn't sold, he would have ended up paying more of her bills. She didn't benefit from the trade, according to the government; he did.

Birth of a Crime

As the treatment of Aliza Waksal and other lucky ImClone investors suggests, the prosecution of insider trading has nothing to do with supposed economic harm or even "unfair" tips, let alone lying to the government. Instead it's about bringing down the biggest and best-known targets to make it look like the laws against insider trading are accomplishing something.

Such publicity stunts are necessary because the insider trading ban is bad economics and worse law. Although there's a broad consensus, among Wall Street executives as well as Washington policy makers, that trading on inside information is harmful to investors and the market, this consensus has never been supported by solid evidence. Yet during the last four decades the SEC has waged a campaign to maintain and expand the scope of the insider trading ban, perpetuating the myth that scores of insiders are secretly enriching themselves at the expense of the investing public.

It has been, in many respects, a successful campaign. In a June survey by the Sienna Research Institute, 60 percent of those polled thought Martha Stewart was guilty of insider trading, and 51 percent thought she was guilty of obstruction of justice. Many people think Stewart "should have known better" because she used to be a stockbroker. But when it comes to insider trading, the SEC and the Justice Department don't want anyone to know better. If they did, they would have long since asked Congress to clearly define the offense. Instead, as *Barron's* Editor Thomas G. Donlan wrote in June, "The government prefers to define [insider trading] case by case. 'He did what? Oh, that should be illegal.' So it is."

Insider trading was not a crime until passage of the Securities and Exchange Act of 1934, Section 10(b), which prohibits "fraud" in the sale of securities. This offense was intended by Congress to cover stock trades by a corporate officer, director, or major shareholder—someone with a fiduciary responsibility to a company's stockholders—based on nonpublic, material, "inside" information. In 1961 the SEC for the first time claimed that Section 10(b) and its SEC-promulgated companion, Rule 10(b)(5), extended beyond people traditionally considered to be corporate insiders. The case involved a Cady, Roberts & Co. broker who learned from a director of Curtis-Wright Corp. that the company was going to reduce its dividend. Before the reduction

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became public knowledge, the broker sold Curtis-Wright shares owned by his wife and clients.

Although the broker was not a traditional insider and did not have a fiduciary duty to Curtis-Wright or its stockholders, the SEC charged Cady, Roberts with insider trading. It argued that Section 10(b) was "designed to encompass the infinite variety of devices by which undue advantage may be taken of investors and others." The SEC thought it was inherently "unfair" for the broker to sell shares when he knew that the people buying them did not have the same information he had. The SEC ignored the fact that all trades on impersonal stock exchanges involve the potential for asymmetric information; one party frequently will know something the other does not. That is how markets work. It's why two people can simultaneously think XYZ stock is a buy *and* a sell at $2.

Yet the SEC is still using the same "fairness" rationale today. Commenting on the insider trading case against Martha Stewart, SEC enforcement director Stephen M. Cutler told *The Washington Post*, "It is fundamentally unfair for someone to have an edge on the market just because she has a stockbroker who is willing to break the rules."

Bad Economics

That position makes no economic sense. In his classic 1966 book *Insider Trading and the Stock Market*, Henry Manne of George Mason University Law School demonstrated that inside information makes stock markets more efficient. Stock market efficiency depends on the speed and the accuracy with which new information is assessed by the market and reflected in share prices. When insiders trade on their knowledge, that information is immediately reflected in stock prices, thereby conveying this "inside" information to the market. The more information available, the more accurate the stock prices and the more efficient the allocation of capital.

What's more, there is no evidence that insider trading harms the market. The SEC says insider trading has to be prevented because it would cause the public to lose confidence in the market and abandon it. Yet such flight does not seem to have occurred in the years before 1934, when insider trading was still legal, and scholars such as Manne point out that the 1929 stock market crash was not caused by insider trading.

A 1987 study by the SEC's own economists casts further doubt on the commission's view of insider trading. The study, which looked at the effect of corporate takeovers on stock prices during the 1980s, determined that, on average, nearly 40 percent of the increase in a target company's stock price occurred before the takeover announcement. Yet the economists found that insider trading did not cause the pre-bid rise, which was entirely the result of speculation in the media, how much stock the acquirer bought before announcing the takeover bid, and whether the bid was hostile or friendly.

A footnote to the report questioned the assumption that inside traders profit at the expense of less-informed investors. "Those selling into the market when the better informed are buying probably would not have sold had they possessed the same valuable information," the economists noted. "However, they still would have sold if the information specialist had refrained from buying, especially if the trading of the specialist did not affect significantly the stock price. This holds true whether the trading is based on insider information or on careful analysis and successful anticipation of the event."

An insider, by definition, has better information than an outsider. So does a market professional. Market professionals sometimes track insiders' buying and selling of their company's positions, which are available through public filings. Whether the trader with better information acquired it from an inside tip or simply through diligence and hard work, the SEC economists reasoned, does not change the effect on either the market or the other party to the trade.

Bad Law

Not only is the SEC's "level playing field" theory bad economics, the U.S. Supreme Court has held that it is bad law. The Court first rejected the theory in a 1980 case involving Vincent Chiarella, who worked in the composing room of a financial printing company, Pandrick Press. Chiarella handled the announcements of five corporate takeover offers. Despite Pandrick's use of code names for the companies, Chiarella was able to deduce their identities. Armed with this knowledge, he bought modest amounts of the target companies' stock before the takeover announcements and sold it immediately afterward. The SEC investigated, confronted Chiarella, and not only made him give up his

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Aliza Waksal avoided $690,295 in losses and her grandfather three times that, while Stewart saved only $45,000. By this measure, the Waksals' sales did more "economic harm."

profits (about $30,000) but referred the case to the U.S. attorney for criminal prosecution. Based on the SEC's level playing field theory, Chiarella was indicted for securities fraud, brought to trial before a jury, and convicted. The always SEC-friendly U.S. Court of Appeals for the 2nd Circuit rubber-stamped the verdict.

On appeal, however, the Supreme Court ruled that Chiarella could not have been guilty of securities fraud. His employer worked for the corporate raider, not the target. Chiarella therefore had no duty to shareholders of the target corporation. "Section 10(b) is aptly described as a catchall provision," Justice Lewis Powell wrote for the majority, "but what it catches must be fraud. When an allegation of fraud is based upon nondisclosure, there can be no fraud absent a duty to speak." Chiarella had no such duty, unless the law required *all* market participants to disclose what they know or to refrain from trading on such information. As Powell noted, "Neither the Congress nor the Commission ever has adopted a parity-of-information rule."

The second defeat for the SEC's level playing field theory involved an investment analyst, Ray Dirks, who specialized in the insurance industry. Two employees of Equity Funding Corp. of America gave Dirks information that enabled him to uncover a shocking and pervasive insurance scandal. Dirks learned that Equity Funding had invented records of policies that never existed to bolster sales figures, intimidated employees who threatened to expose the fraud, and falsified other corporate records to paint a picture of fiscal health. The corporation's executives knew all this was taking place.

Upon learning the extent of the scandal, Dirks told his clients, who promptly sold their Equity Funding stock. Then he told the SEC and *The Wall Street Journal*. Instead of praising Dirks for uncovering the scandal, the SEC hauled him into court. As punishment for giving his clients the "inside information" on Equity Funding, Dirks was prohibited for six months from trading or associating with a registered broker/dealer.

The U.S. Court of Appeals for the District of Columbia Circuit upheld the SEC's action. In a decision that can charitably be described as confused, the D.C. Circuit ruled that the Supreme Court really did not mean what it said in *Chiarella*. Even though Dirks had no fiduciary responsibility to Equity Funding, the appeals court said, he had an overriding obligation to the SEC and the trading public to disclose the fraud or to refrain from trading.

The Supreme Court, which ruled on Dirks' appeal in 1983, was not pleased. In unusually blunt language, Justice Powell wrote: "We were explicit in *Chiarella* in saying that there can be no duty to disclose where the person who had traded on inside information was not [the corporation's] agent...was not a fiduciary, [and] was not a person in whom the sellers [of the securities] had placed their trust and confidence."

The Supreme Court's message to the SEC in *Dirks* was as clear as it was in *Chiarella*: If you want a level playing field, go see Congress, not us. Section 10(b) is about fraud, not fairness. The Court also went out of its way to chastise the SEC for its inconsistency in insider trading enforcement. Suggesting that it was "hazardous" to deal with the SEC, the Court accused the commission of bringing "test cases" that contradicted its stated enforcement policies. In his opinion, Powell quoted from a speech by a former SEC chairman who said the commission "does not contemplate suing everyone who may have come across inside information" and specifically listed as people who would not be sued "persons

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Not only is the SEC's "level playing field" theory bad economics, the U.S. Supreme Court has held that it is bad law.

outside the company such as the analyst or reporter who learns of inside information"—in other words, people like Ray Dirks.

Misappropriated Logic

When Powell retired from the Supreme Court, the SEC got the opportunity to try out a new version of the level playing field theory based on the concept of "misappropriation." It's best illustrated by *Wall Street Journal* reporter Foster Winans, who was one of the writers of the *Journal*'s "Heard on the Street" columns, which frequently affected stock prices. Perhaps comforted by that SEC chairman's assurances that reporters wouldn't be sued, Winans agreed to disclose the subject of the next day's column to a broker who sometimes traded on that information, giving Winans a small portion of his profit.

Like Chiarella, Winans was hit with both civil and criminal charges even though he had no fiduciary obligations to either the buyers or the sellers of the stocks traded. The only party he defrauded was his employer, *The Wall Street Journal* (which fired him but did not pursue criminal charges). The only basis for the insider trading charges against Winans was the level playing field theory, i.e., the idea that selling advance information about the column wasn't "fair" to the market. Yet the SEC argued that because he had committed a fraud on his employer, *The Wall Street Journal*, by "misappropriating" information that belonged to it, Winans was guilty of securities fraud under Section 10(b), even though the entity he defrauded, *The Wall Street Journal*, had no connection with any securities trade. Winans was convicted of insider trading as well as federal mail and wire fraud, and the 2nd Circuit upheld his conviction. The Supreme Court affirmed Winans' mail and wire fraud conviction but split 4-4 on the insider trading conviction and issued no opinion. Powell, who had retired a few months earlier, would have been the deciding vote.

It wasn't until 1997, in *United States v. O'Hagan*, that the Supreme Court approved the misappropriation theory. O'Hagan was a lawyer whose firm represented a company that intended to make a tender offer for Pillsbury. O'Hagan "misappropriated" this information without his client's knowledge or consent by buying call options in Pillsbury stock, which became very valuable when the tender offer was announced. O'Hagan took home a tidy $4.3 million in profits. As with Chiarella, Dirks, and Winans, no one in the market was hurt by this action, not even O'Hagan's client. The government, under the same misappropriation theory it had used with Winans, secured a conviction. The U.S. Court of Appeals for the 8th Circuit reversed on the grounds that the misappropriation theory was beyond the scope of Rule 10(b)(5) and did not involve fraud directed toward a buyer or seller of securities. The 8th Circuit also reversed O'Hagan's mail fraud and money laundering convictions, concluding that they rested on violations of the securities laws that had not been proven.

There was no way the Supreme Court could let a lawyer get away with making millions of dollars by stealing confidential client information, so it reinstated the conviction and approved the misappropriation theory. But the Court said its decision was not based on fairness or protecting the trading public. The Court in its decision and the government in oral argument agreed that it would have been perfectly legal for O'Hagan or Foster Winans to trade on their inside information had they privately disclosed to their client and employer, respectively, what they were

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doing, notwithstanding the "unfairness" to the market. No deception, no foul.

Although the misappropriation theory narrows the definition of insider trading, the SEC continues to believe in the level playing field and to look for ways to broaden its approach. In *O'Hagan* the government argued that "the very aim of [section 10(b)(5)] was to pick up unforeseen, cunning, deceptive devices that people might cleverly use in the securities markets." Justice Clarence Thomas quoted this claim in his dissent, along with the dry response of one of his colleagues: "That's rather unusual for a criminal statute to be that open-ended, isn't it?" Yes, it is. But open-endedness has its advantages. It allows the SEC to ignore, condone, or even facilitate insider trading when it chooses and then go after a juicy target like Martha Stewart, whose alleged insider trading is well outside anything recognized as such by the Supreme Court.

Ivan the Not-So-Terrible

In its heart of hearts, even the SEC knows insider trading doesn't hurt the market. Remember the financier Ivan Boesky? Back in the 1980s, Boesky agreed to pay a record $100 million in penalties for trading on inside information purchased from the Drexel Burnham Lambert investment banker Dennis Levine. *The Wall Street Journal* estimated that Boesky had made more than $200 million in profit from Levine's information. By cutting a deal, the SEC let Boesky keep half of his illicit profits.

But wait, it gets better. Before the SEC announced the settlement, it allowed Boesky to cut his trading partnership's liabilities by $1.3 billion through a series of government-sanctioned insider trades. SEC Chairman John Shad later told a House committee that the market wasn't hurt by those trades because it bounced back after a one-day loss. So keeping $100 million in ill-gotten gains and executing insider trades totaling more than $1 billion are both OK if the SEC says so.

Yet Martha Stewart got nailed for saving $45,000 without breaching a fiduciary duty to anyone. The initial trading case against her centered on whether she knew that Sam Waksal was selling his ImClone stock because of the FDA's impending rejection of the company's anti-cancer drug. The feds interviewed Stewart about the sale and claim that during the interview she lied to cover up her wrongdoing and then issued false claims of innocence when anonymous government sources leaked these unproven accusations against her, allegedly doing so to support her own company's stock price.

The government now admits Stewart never had inside information from Waksal. Here are the facts patched together from various pleadings and other public accounts:

On December 27, Stewart and her friend, Mariana Pasternak, were flying in Stewart's private jet to San Jose del Cabo, Mexico, for a vacation at a resort. The plane stopped to refuel in San Antonio, where Stewart called her office on her cell phone and learned that her Merrill Lynch broker (and friend), Peter Bacanovic, had telephoned. Bacanovic, who was also a broker for Waksal and his daughter, Aliza, was in Miami at the time and didn't connect with Stewart when she returned his call at Merrill.

According to the SEC, Douglas Faneuil, Bacanovic's assistant, who copped a plea in exchange for a misdemeanor slap on the wrist, advised Stewart, at the behest of Bacanovic, that the Waksals were selling their ImClone stock. In doing so, Faneuil (and allegedly Bacanovic) broke Merrill Lynch's customer confidentiality rule. Stewart asked Faneuil where the stock was trading. Faneuil said $58, and Stewart told Faneuil to sell her remaining ImClone shares (3,928 shares for close to $230,000). Stewart then left a message for Waksal at his office, subsequently summarized in a note from Waksal's secretary: "Martha Stewart. Something is going on with ImClone and she wants to know what."

The SEC started investigating ImClone within days of the FDA announcement on December 28, 2001. It first interviewed Bacanovic on January 7, 2002, and Stewart on February 4. Stewart and Bacanovic each told investigators that she unloaded her shares because of an oral arrangement they had to sell her ImClone shares at $60. Faneuil initially backed them up but later recanted, telling prosecutors there was no agreement. He said Bacanovic pressured and bribed him (with extra vacation and free airline tickets) to lie. As further proof of this cover-up, the Justice Department's indictment cites the fact that Bacanovic marked "@60" near the listing for Stewart's ImClone holdings in a blue ink different from the blue ink he used on a spreadsheet where he wrote down portfolio decisions for Martha's various holdings on December 20. The feds claim the different ink proves that he made the notation after December 27.

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Before suing Stewart, the SEC had never gone after the customer of a broker who offered his knowledge of what another customer had done as a reason to make a trade.

Forensic experts say there is no way to tell when the "@60" notation was made.

The SEC also charges that prior to the initial February interview, Stewart temporarily changed an entry in her telephone log from "Peter Bacanovic thinks ImClone is going to start trading downward" to "Peter Bacanovic re: ImClone." Then she had second thoughts and changed the log back to its original form. This aborted tampering with evidence does not prove Stewart was guilty, but it does illustrate the uncertainty created by the government's murky insider trading rules.

The Real Insiders

A better approach would focus on actual wrongdoing rather than the perceived unfairness of unevenly distributed information. Insider trading should be regulated by existing criminal laws that prohibit industrial espionage and the theft of trade secrets and sensitive commercial information. Dennis Levine, for instance, could have been prosecuted for stealing proprietary information from his employer and selling it to Boesky. Ditto O'Hagan. At most, Foster Winans and Peter Bacanovic should have been fired for violating their employers' internal policies, not prosecuted or sued for insider trading.

Anything more should be left to the public companies and the stock exchanges on which their shares are traded. If companies want to permit or prohibit insider trading by their executives, let them say so publicly and let investors decide if they want to buy shares based on that policy. If a stock exchange believes insider trading damages investor confidence, it should require companies whose shares trade on the exchange to have rules against it.

The SEC does not want this to happen. Its prosecution of Ray Dirks for saving his clients from the Equity Funding fraud and its failure to sue Sam Waksal's daughter, father, and anonymous friends for their insider trading suggest why. The SEC does not care about protecting individual investors; insider trading has no effect on them anyway. It does not care about the integrity of the market or capital formation; insider trading has no effect on them either. The only people protected by SEC prosecution of the nebulous "crime" of insider trading are SEC lawyers and their allies, who can keep on inventing new definitions of the offense as they go along. Before suing Stewart, the SEC had *never* gone after the customer of a broker who offered his knowledge of what another customer had done as a reason to make a trade.

The Justice Department and the SEC don't care about the "fairness, efficiency, and integrity" of our capital markets. Letting Aliza Waksal keep her profits from insider trades proves that. The government lawyers want to enhance their own power and prestige. They don't care who they hurt in the process, such as the shareholders of Martha Stewart Living Omnimedia, who saw the company's value drop by over $400 million between December 2002 and August 2003.

What's worse, these government lawyers don't seriously expect to prevail at trial. Without a credible claim of insider trading against Stewart, the securities fraud charge based on her public (and truthful) denials of the government-leaked claims that she was guilty of insider trading will collapse. Martha will walk, and it will be a good thing. But she and her shareholders will have paid an unnecessary price. That's not a good thing. It's a disgrace. And a damn shame. ◻

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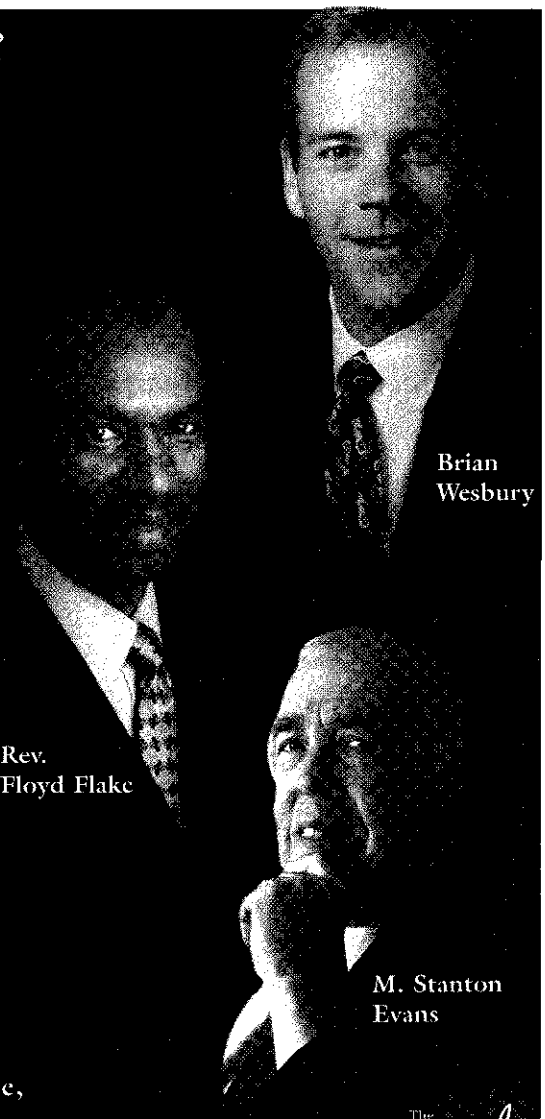

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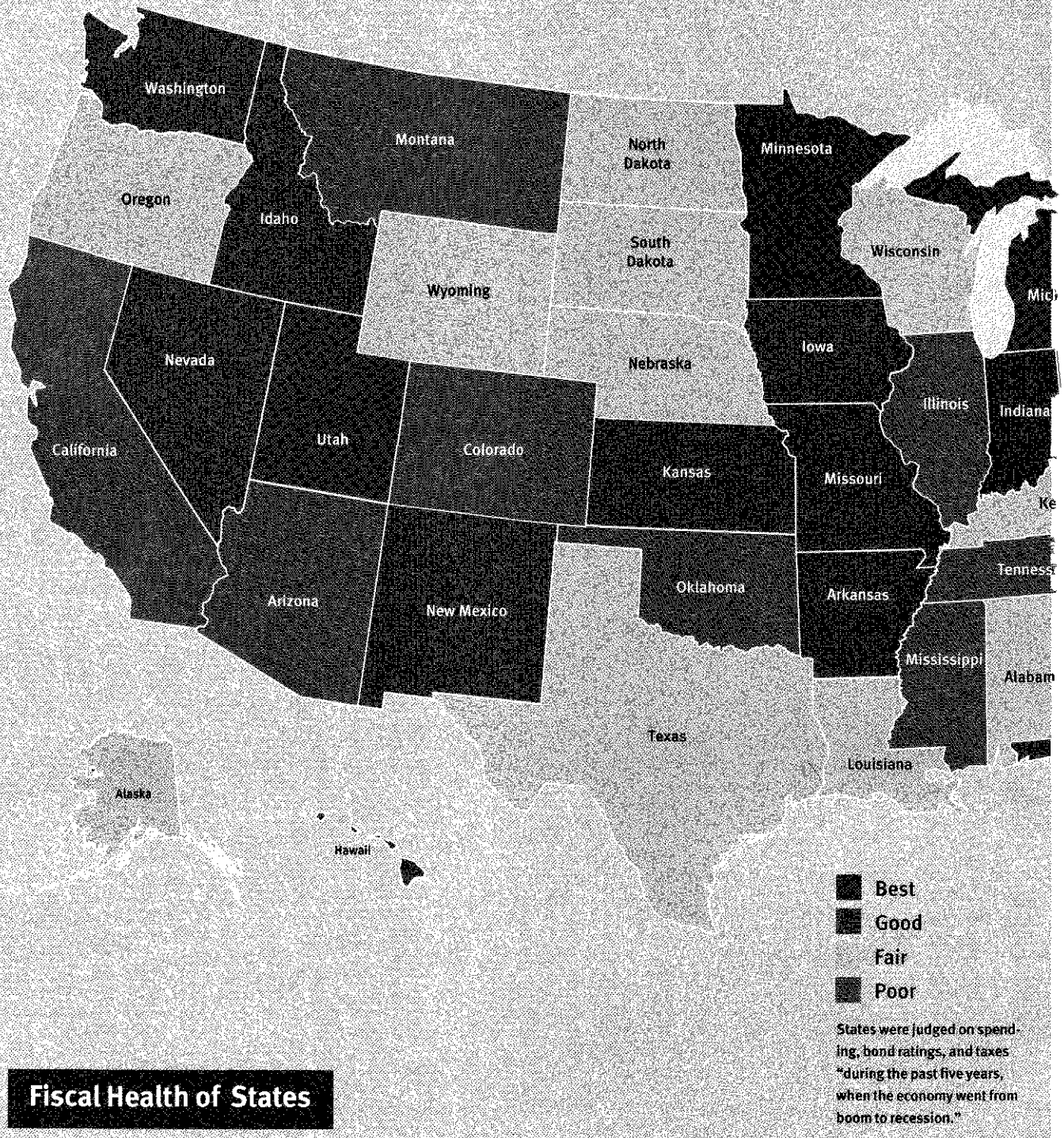

Fiscal Health of States

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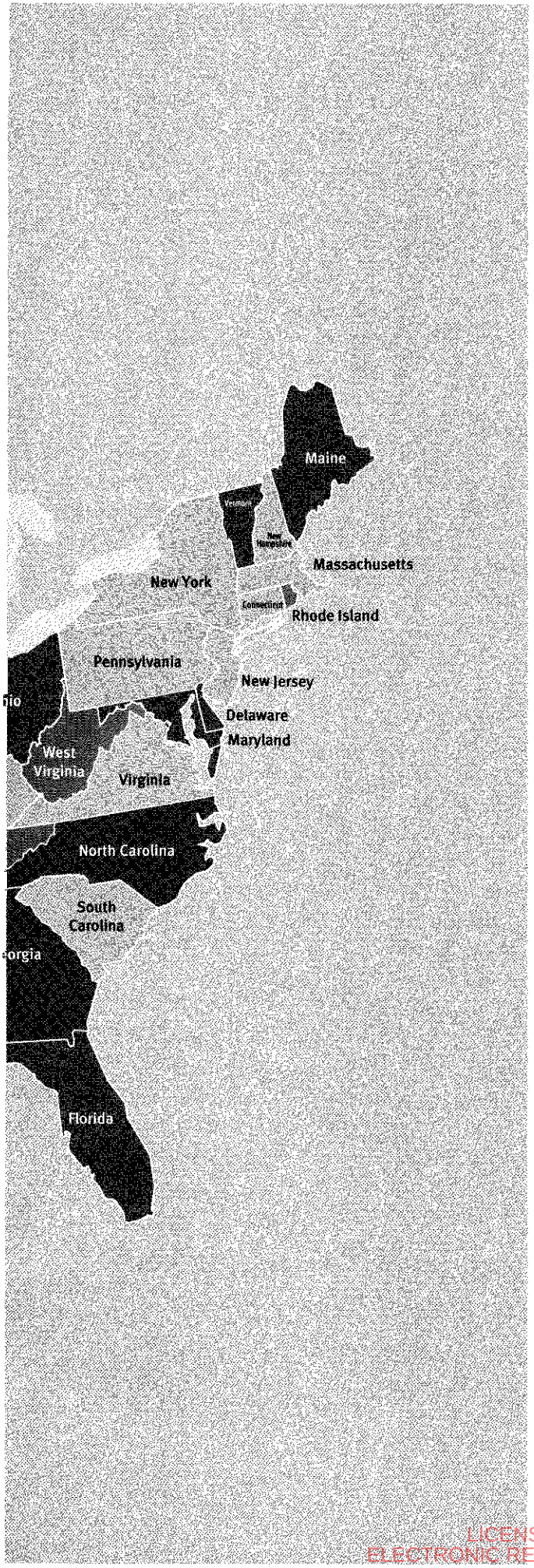

Why the States Are Broke

Bloated governments, budget gaps, and Parkinson's laws

John Hood

"For the first time in a long time, someone is going to be minding the store," declared the newly elected governor of a large Midwestern state. The occasion was an April speech defending his proposed budget and restating his campaign promise not to raise taxes. In response, the opposition leader in the state Senate repeated his call for major tax increases to close a yawning budget gap. Among other things, the senator wants to expand the state's sales tax to cover services. "There will be no haircut tax under this administration," the governor's deputy replied testily.

Meanwhile, in a nearby state, another governor was calling for a $2 billion sales tax expansion. His plan would tax services ranging from lobbying to dry cleaning, on top of already enacted increases in excise taxes on cigarettes and gasoline.

The no-new-tax governor was Illinois' Rod Blagojevich—a Democrat. His legislative antagonist was Pate Philips—a Republican. And his tax-increasing neighbor was Republican Gov. Bob Taft of Ohio.

USA Today, June 22, 2003

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Democrats as fiscal conservatives? Republicans as tax hikers? Welcome to the topsy-turvy world of government finance, where political labels can confuse more than inform, where experts specialize in deliberately misleading "analysis," and where all is not as it seems.

Since the onset of recession in 2001, the national economic debate has centered around President George W. Bush's proposed tax cuts, his terror-induced wave of new federal spending, and Capitol Hill squabbles about budget deficits and interest rates. For most Americans, however, these issues are distant, theoretical, and mostly rhetorical. More important are the images they're seeing on breathless local television newscasts and morning chat programs. In Kentucky they've seen convicts released early from crowded prisons. In California they've heard of possible mass layoffs of schoolteachers, following on the heels of a two-week stint of work without pay for Oregon teachers and new janitorial duties for their counterparts in Oklahoma. In Missouri state employees were unscrewing every third light bulb to cut energy bills.

Such images might help explain why polls show so little enthusiasm for the president's proposed tax cuts. Americans already have seen federal tax relief offset by tax increases at the state and local levels, with more hikes expected soon. And they're spooked by the apparent incompetence and penury of the governments that patrol their streets, pave their highways, and educate their children.

The federal government, far removed from the people and subject to interest group politics and the vagaries of international events, is supposed to be the broken institution. States, competing with each other and informed by grassroots common sense, are supposed to exemplify the genius of the American experiment. But reality is more complex. State governments are stumbling, taxing, and growing. Self-proclaimed fiscal conservatives aren't paying enough attention to big-ticket items such as Medicaid or to the long-term structural changes that could at least slow government's growth. And so they remain hostage to basic laws of voter preferences and bureaucratic behavior that push taxes and budgets ever upward.

Fuzzy Math

Numbers don't lie, although I can't say the same for their political abusers. The share of gross domestic product consumed by the federal government shrank for most of the 1990s, with rates of annual spending growth often in the low single digits. At the same time, state and local governments experienced an almost unprecedented growth spurt in both revenues and expenditures. Their share of GDP rose to nearly 13 percent in 2001, up from 11.4 percent in 1990.

Bill Clinton's federal budgets grew more slowly than George W. Bush's have, while the undeniable rise of Republican influence in state capitals during the 1990s did not necessarily result in fiscal discipline. Indeed, a *USA Today* analysis showed that from 1997 to 2002 Republican-controlled states saw slightly higher annual spending increases (6.85 percent) than Democrat-controlled states (6.79 percent). Taxpayers were usually better off when the governor and the legislative majority hailed from different parties.

The data reveal other surprises. So far, by most accounts, the recession that began in 2001 is one of the mildest on record. Yet also by most accounts, state governments since 2001 have experienced one of the most severe fiscal emergencies since the Great Depression. Is something unique and inexorable going on here?

Many alleged experts on government finance say so.

By most accounts, the recession that began in 2001 is one of the mildest on record. Yet also by most accounts, state governments since 2001 have experienced one of the most severe fiscal emergencies since the Great Depression.

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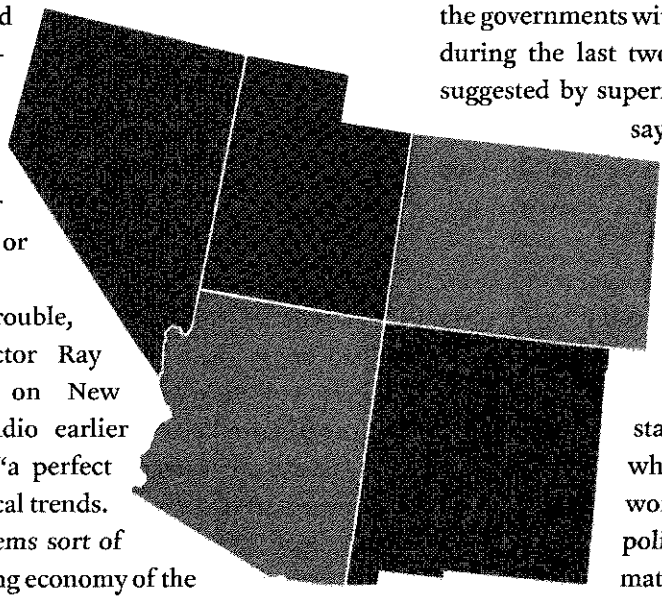
Writing from academic roosts or from policy groups such as the Brookings Institution or the Center for Budget and Policy Priorities, they blame the current crisis on "structural problems" in state tax codes created by the New Economy, uncontrollable inflation in education and health costs, excessive tax cutting by the surging Republicans during the 1990s, and international trade policy. Supposedly non-ideological groups such as the National Governors' Association (NGA) and the National Conference of State Legislatures (NCSL) repeat and amplify these messages to a broader audience, as do gullible or ax-grinding reporters.



States are having trouble, NGA Executive Director Ray Scheppach declared on New Hampshire Public Radio earlier this year, because of "a perfect storm" of long-term fiscal trends. "Most states have systems sort of built for a manufacturing economy of the 1950s," he said, rather than for "a high-service high technology international economy of the 21st century. There's a deteriorating tax base. We don't tax services, and that's where growth is."

The reality is more prosaic. What we have seen in various states is little more than the confirmation of old maxims about how and why governments grow and what, if anything, can be done to arrest that growth. One useful way of thinking about this is to recognize that state lawmakers are obeying Parkinson's laws.

C. Northcote Parkinson, an oddball with an odd name, was a British novelist and historian whose output ranged from Napoleonic-era military fiction to a history of seaborne trade. But his major claim to fame was *Parkinson's Law* (1957), which began a delightful series of books about how organizations make decisions, particularly bad ones. Here are some of Parkinson's best-known laws and how states are illustrating them:

1. "Expenditure rises to meet income."

In his 1960 book *The Law and the Profits*, Parkinson noted that bureaucracies, public and private, will usually find ways to spend pretty much whatever money comes in. That is, they don't build their annual budgets from the ground up. They discover the level of expenditure they can finance without breaking too much of a sweat, then work backward to justify that level as "essential" to meet the institution's "needs." The problem is exacerbated in governmental settings because there is no search for profit and few competitive pressures to tame the natural appetite for spending.

Among the states, it is notable that most of the governments with the biggest fiscal problems during the last two years don't fit the profile suggested by superficial media reports. Let me say first that I define "big fiscal problems" differently than some do. After a dozen years of experience closely watching a state legislature in action, in my home state of North Carolina, I can testify that *projections* of state budget deficits, which are what get reported to the outside world, usually are the result of *political calculations* as well as mathematical ones. So don't pay too much attention to whether a state "projects" a $1 billion deficit or a gap three times that amount. I can "project" a $100,000 deficit in my own household finances next year based on the fact that the vacation home my family "needs" to purchase cannot be financed at my current level of income. Similarly, governors and legislatures looking for excuses to raise taxes can and do manipulate budget numbers to project massive deficits on the basis of pie-in-the-sky expectations for state employee raises, new programs, and the like—even excessive projections of growth in admittedly burgeoning programs such as Medicaid.

A better way to measure the relative magnitude of fiscal problems is what governors and legislatures actually do about them. Since 2001, reports the Rockefeller Institute of Government, 20 of the 50 states have enacted "significant" tax increases (amounting to at least 1 percent of general fund revenue), with 10 of those raising broadly applied tax rates on items such as individual income or retail sales. (The rest have mainly fiddled around with excises on ciga-

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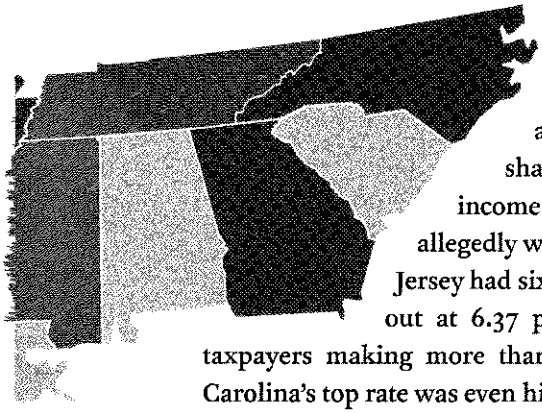
rettes.) If the NGA/NCSL establishment is correct, then the states with the lowest rates of taxation to start with or the highest rates of expenditure growth over time, or both, would be the most likely to resort to tax hikes to bail themselves out of fiscal fixes. But no such pattern exists. About as many of these tax-raising states have fallen below the national average in spending growth in recent years as have exceeded it. Similarly, a slight majority of the tax-raising states were above average in tax burdens *before* the recent recessionary budgets, so it would be hard to argue that their resort to tax increases was due to some sort of basic inadequacy or to excessive tax cuts in the past.

The fiscal data offer even worse news for those who believe the states need to rely less on the archaic and regressive sales tax and more on progressive income taxes. This policy prescription is intended to head off future fiscal crises by allowing state revenues to track more closely the dynamics of our service-driven economy. Since a sales tax is essentially limited to physical goods, it is argued, it will inevitably fail to keep up with an economy increasingly composed of service industries that aren't taxed at retail. Income taxes pay no attention to whether goods or services are being sold and are thus supposed to be a more robust revenue source in the New Economy.

But seven of the 10 states that have been "forced" to raise broadly applied taxes in the last two years were already more heavily reliant on the income tax than the average state. And the only two states to have raised these taxes in both 2001 and 2002, New Jersey and North Carolina, already had the sharply progressive income tax systems that allegedly would be best. New Jersey had six rates that topped out at 6.37 percent for single taxpayers making more than $75,000. North Carolina's top rate was even higher: 7.75 percent for those making at least $60,000. (A 2001 tax bill added yet another rate of 8.25 percent for income above $120,000.)



Heavy reliance on progressive income taxes is actually a recipe for *more* budget woes. Other things being equal, it gets states into trouble because of what might be called fiscal turbulence. Rising incomes, supercharged in the 1990s by big capital gains, push more taxpayers into higher tax brackets. This accelerates the growth of tax revenues above the rate of overall growth in incomes and the economy. Flush with cash, state lawmakers create new programs to satisfy various "unmet needs": class size reduction, infrastructure construction, health care, and the like. Yes, they may also create a small savings account or toss off a few tax cuts to mollify fiscal conservatives, but rarely do they make fundamental changes such as lowering marginal rates. (Indeed, the much-hyped "deep" state tax cuts of the 1990s only partially offset the tax increases that legislatures had imposed during the 1990–91 recession.)

Of course, what quickly goes up can quickly come down. When boom yields to bust, and especially when capital gains booms yield to stock market busts, states dependent on progressive income taxes see their projected revenues fall faster than average as households and businesses shift to lower brackets. The result is a large, unforeseen hole in the budget.

Parkinson's insight here is that it's not really projected budget deficits or the perceived need for more spending that guides fiscal decision making. It's a breeze for politicians to justify new government expenditures, at least to themselves. What they struggle with is how to justify higher levels of taxation. They see recession-driven drops in revenue growth as prime opportunities to sell higher taxes. Rarely do they go back later, when the economy recovers and coffers are bulging, to repeal all or even most of their previous increases. It's a ratchet effect, similar to the one the historian Robert Higgs has observed in federal government growth during times of war.

2. *"Work expands so as to fill the time available for its completion."*

This is the most famous of Parkinson's laws. Anyone familiar with elastic deadlines can immediately grasp it.

In the state government context, the implications are subtle but critical. Most state legislatures operate under time constraints. They begin their regular sessions in January and end on a fixed date, often in March or April. But 10 states extend their regular sessions beyond four months a year, and another 10 operate without any meaningful restriction on how long they can meet in regular session. Interestingly, 13 of these 20 states are also among the 20 that have raised taxes during the last two years. Three additional states with

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lengthy legislative sessions—New York, Missouri, and South Carolina—may enact tax increases in 2003.

Why do legislatures that meet longer tend to end up with larger fiscal problems and a greater recourse to hiking taxes? Because the Parkinsonian "work" lawmakers do to fill the time allotted to them consists to a large extent of sitting in committee meetings at which a parade of government managers, state employees, and special interest lobbyists make the case for how much their pet program is "needed" and would be "sliced to the bone" unless the state raises taxes. Other "work" involves dreaming up new programs or pork barrel projects to attract media attention.

Furthermore, the longer a politician is parked in this big-government echo chamber, the more he or she forgets any previous convictions about limited government or the need for frugality. Average taxpayers, after all, don't spend much time lobbying and cajoling politicians in the often distant state capital. Studies from the Competitive Enterprise Institute, the National Taxpayers Union, and my own organization, the John Locke Foundation, have confirmed a version of this effect for long-serving members of Congress and state legislatures. The more years a politician spends in office, the more he or she votes for bigger government. It's no great stretch to expect a similar effect based on how much time state legislatures spend in session each year.

Sometimes the link is even more direct than that. Michael LaFaive, director of fiscal policy at the Michigan-based Mackinac Center for Public Policy, relates the story of how his state's legislature reacted in 2000 when an unforeseen surplus of $600 million materialized. By midyear it was already evident in the stock market and elsewhere that the national economy was clouding up. But instead of banking the funds for a rainy day, Michigan lawmakers went on a spending spree. "This might not have happened had we had a part-time legislature," LaFaive says, "because it probably wouldn't have been in town to react impulsively" to the discovery of the surplus. As it was, only two House members out of 110 voted against the spending measure, which included a $10 million polar bear exhibit at the Detroit Zoo and a $5 million aviation museum in Kalamazoo.

3. *"The matters most debated in a deliberative body tend to be the minor ones where everybody understands the issues."*

Whenever you hear state lawmakers waxing eloquently about how they are "cutting spending to the bone" by shuttering state aquariums, turning down the thermostat in state buildings, or sending state employees to fewer out-of-town conferences, you can see one of Parkinson's lesser-known laws in force. It is easy for politicians, the news media, and the general public to sink their teeth into these sorts of savings. You can gain of lot of rhetorical mileage out of anecdotes that involve relatively small amounts of money and evoke emotional reactions. Just a paragraph ago, I did it myself.

Still, bureaucrats misusing state vehicles to visit girlfriends and construction offices peddling contracts to pay off political contributors aren't the cause of growing governments and rising taxes. It's a good thing to find savings wherever you can, and certainly government-run attractions such as museums and historic sites should be generating their own fee income if the public is as enamored with them as their hand-wringing champions claim. But the real causes of burgeoning state governments are large, sprawling, lobby-infused programs, such as Medicaid and public universities, that too few lawmakers fully comprehend or are willing to take on.

Medicaid, the joint state-federal health care

In his 1960 book *The Law and the Profits*, Parkinson noted that bureaucracies, public and private, will usually find ways to spend pretty much whatever money comes in.

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program for the disabled and the poor, is eating up an ever-increasing share of state general fund money. Expenditures grew by an average of 12.5 percent in 2002 alone, representing tens of billions of dollars in new spending. (Washington is paying 57 percent, while the states pick up 43 percent.) There is no shortage of sound explanations for why Medicaid is such a mess. Basically free to its beneficiaries, the program offers more benefits than the average private health plan does and thus encourages wasteful consumption of care. And as both Congress and the states expanded eligibility and the benefits package of Medicaid in the 1980s and 1990s, it became increasingly attractive for low-income persons, sometimes far above the federal poverty line, to adjust their finances (or at least what they reported their finances to be), drop their private coverage, and sign up for free health care.

Expansion has been particularly costly in health care for the disabled and elderly portions of the caseload, where much of the growth and a whopping three-quarters of the annual cost can be found. There is a fast-growing industry of lawyers and financial advisers specializing in ways for middle-class families to get their parents or other relatives qualified for Medicaid. The program now pays for two-thirds of all nursing home residents, nearly half of all births in many states, and the health care expenses of about a quarter of all children under the age of 5, with no real evidence that the health care outcomes are significantly better or that Medicaid expansion has had the net effect of reducing the ranks of the uninsured.

Even these facts do not fully capture the insidious impact of Medicaid and similar shared-responsibility programs on state budgets. Because Washington matches states more than dollar-for-dollar for Medicaid expenses, state policy makers have strong incentives not to pursue even obvious opportunities for savings. If they adjust benefits, tighten eligibility, rein in reimbursements, or just try to police fraud and waste better, they keep only a fraction of each dollar "saved," but they get all the public opprobrium. And this assumes the political actor has a deep knowledge of the program and its wacky finances in the first place. "The information deficit is huge," says Michael Greve, a scholar at the American Enterprise Institute. "Medicaid is intentionally and deliberately complicated. And when something goes wrong, [lawmakers] don't have anyone local to yell at. State officials point to D.C. and say, 'They did it.'"

Research by Greve and his colleagues shows clearly that recent Medicaid growth doesn't reflect the "we couldn't help it" line peddled by politicians and their handlers. States such as Florida and Arizona that attract high proportions of retirees "should be a basket case" when it comes to Medicaid inflation, Greve says, but the reality is that they have controlled costs better than most. Moreover, Medicaid spending has grown rapidly during boom years, not simply during recessions, when people lose their jobs and work-based health insurance.

In a further illustration of Parkinson's law that "expenditure rises to meet income," Greve and his colleagues also found that one of the strongest predictors of Medicaid growth in the 1990s was growth in state revenue collections. If state politicians saw money coming in, a combination of gullibility and moral hazard led them to spend much of it on the Medicaid monster.

Why the Laws Are Bronze

Not every state is in desperate fiscal shape and ravenous for higher taxes. Not every Republican governor spouting

One fiscal strategy that sounds like a gimmick—pushing candidates to take a no-new-tax pledge, a core mission of the group Americans for Tax Reform—has turned out to be surprisingly useful.

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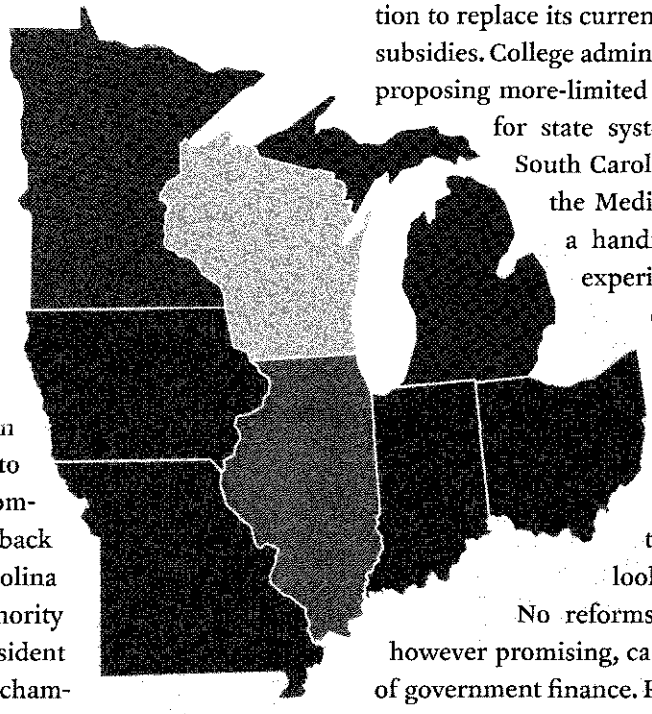
limited-government rhetoric turns out to be phony; some, such as Florida's Jeb Bush, Montana's Judy Martz, and Colorado's Bill Owens, really have controlled spending and held steady or even reduced their tax rates during the recent downturn. And the performance of both governors and legislatures in some states is proof that Parkinson's laws aren't forged in cast iron. They're made of wrought iron, or perhaps even bronze, and thus do have some room to give.

One fiscal strategy that sounds like a gimmick—pushing candidates to take a no-new-tax pledge, a core mission of the group Americans for Tax Reform—has turned out to be surprisingly useful. Lingering pressure from their campaign stances has encouraged not only Illinois' Blagojevich but also new Democratic governors in Michigan, Oklahoma, Kansas, Virginia, and Arizona to resist hikes in broad-based taxes. When Republican lawmakers in particular vote to raise taxes after previously promising not to, the political blowback can be fierce. In North Carolina this year, the Democratic minority in the House allied with dissident Republicans to organize the chamber and, later, to pass the third major tax increase in as many years. Already some of the freshman Republicans in the coalition who betrayed their no-tax pledge are reconsidering their position as the folks back home find out and as potential primary challengers emerge.



On an institutional level, tax or expenditure limitations (TELs) have been valuable tools in the fiscal restraint arsenal. But not all TELs are created equal. A 2001 Cato Institute study found that measures placed into state constitutions or law by citizen referendum and requirements that taxes and spending rise no faster than inflation plus population growth have had large and beneficial effects on state budgets. But when legislatures pass mild revenue or expenditure caps, easy to evade and largely unenforceable in the breach, the result can be *more* spending from lawmakers who think they're behind political cover.

Setting up political or institutional counterweights to the public choice dynamics that drive government growth in state capitals can yield some fascinating and hopeful outcomes, especially when accompanied by serious attempts to organize taxpayer lobbies, free market think tanks, and alternative media conduits for political information. For the first time in decades, for example, governors and legislators under fiscal pressure are rethinking their slavish devotion to pouring massive funds into state university systems. Colorado, with both a political tailwind and a strong TEL, is considering a voucher system for higher education to replace its current set of institutions and subsidies. College administrators themselves are proposing more-limited privatization measures for state systems in Massachusetts, South Carolina, and Wisconsin. On the Medicaid front, Florida and a handful of other states are experimenting with a defined-contribution approach that gives patients more financial incentives to shop wisely and more choices about where and what to buy. The early results look encouraging.

No reforms or political victories, however promising, can repeal the basic laws of government finance. Politicians will continue to tax. They will continue to spend. And they will continue to spin, holding endless conferences and issuing countless reports to justify their actions. Parkinson got that one exactly right when he reportedly told a lecture audience: "Government's handling of a difficult matter by appointing a commission...is just like a person going to the toilet. There is a sitting, a report, and then the matter is dropped." ▯

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Designing Rules

Making room for different tastes

Virginia Postrel

Irvine, California, is the epitome of tightly controlled urban design, a squeaky-clean edge city of office parks and master-planned neighborhoods. The Orange County town is so tidy that when my husband started teaching at the University of California campus there he couldn't find a gas station.

I've come here to talk with Steve

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Kellenberg, who creates master plans for large-scale developments that sell more than 1,000 homes a year. These "high-production, high-velocity" businesses represent the present and future of American home construction, supplying the booming suburbs of the Sunbelt. I'd heard Kellenberg tell an audience of developers about survey data showing that 63 percent of buyers in master-planned communities want more diversity, while only 32 percent want their neighborhood to look consistent.

That was what I wanted to hear. Like many variety-loving city dwellers, I'm leery of master-planned communities, even though I know they're extremely popular. It's bad enough that even my little 18-unit townhouse complex has ridiculously conformist rules—no plants by the front door, no non-neutral window coverings, no door decorations except around Christmas—but at least our homes are literally connected to each other, making the cost of spillovers high. I can't imagine wanting to live in a whole neighborhood of similar uniformity.

But people really are different.

During the last two decades, master-planned communities with standardized styles and prescriptive "pattern books" have become the norm for large-scale home developments. These communities sell predictability. While old-line suburbs started out fairly uniform to keep down construction costs, owners could (and did) dramatically transform their properties over time. Master-planned developments, by contrast, seek to control changes. Buyers are bound by contract to abide by rules designed to preserve a certain look and feel.

The Highlands Ranch community in Colorado, for instance, limits house numbers to no more than six inches tall and kids' backyard clubhouses to no more than 24 square feet. No white picket fences are allowed in most neighborhoods. An enforcement team cruises the streets looking for such offenses as deviant home colors. (A light purple house got neighbors particularly riled up.) A competing community, Prospect New Town, takes a contrasting tack, going so far as to require striking colors on its houses—no Highlands Ranch neutrals allowed. Prospect, too, tightly regulates its environment. The developers require changes on 95 percent of the new house plans submitted for their approval. "It sounds harsh," says one developer. "But somebody's taste has to prevail, or else it would be anarchy."

Building appearance is getting the sort of government scrutiny once reserved for public health and safety. A 1993 survey found that 83 percent of American cities had some form of design review to control building looks.

In this case, the taste enforcement occurs within a voluntary, profit-sensitive development that has to compete with nearby alternatives offering radically different design philosophies. Homebuyers select the design regime that fits their personalities and lifestyles, and business success depends on design rules that please potential residents. But such restrictions aren't limited to competing contractual communities. The public sector has jumped into the act, bringing similarly uniform standards to property owners who don't necessarily want them.

Building appearance is getting the sort of government scrutiny once reserved for public health and safety. A 1993 survey found that 83 percent of American cities and towns had some form of design review to control building looks, usually on purely aesthetic (as opposed to historic preservation) grounds. Three-quarters of these regulations, covering 60 percent of cities and towns, were passed after 1980, an adoption rate survey author Brenda Case Scheer compares to that of "zoning in the 1930s." The trend appears to have accelerated in the late '90s.

Some communities prescribe design rules in detailed *dos* and *don'ts*. Others use general terms like *appropriate* and *compatible*, illustrated with drawings showing acceptable and unacceptable examples. Scheer, now the dean of the Graduate School of Architecture at the University of Utah, recalls a suburb that had no specific rules at all, allowing the design review board to outlaw whatever members happened to dislike. The result was an ad hoc checklist of idiosyncratic no-nos. "The *strangest* things," she says, "like they didn't want to have any windows with round tops on them. The decking on a deck couldn't run diagonally. If you had shutters, your shutters had to be able to close."

That town isn't an isolated example. Architectural review boards, planning commissions, and city councils often have broad discretion to determine and enforce taste

previous page Caminito Street, Buenos Aires, Argentina ©Dennis Degnan/CORBIS

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standards, from mandating roof lines and window styles to specifying what kinds of trees can be planted. Minutes of routine meetings record officials opining that the red leaves of ornamental bushes will clash with the brick of a shopping center sign and instructing a housing developer to build more single-story homes on certain streets. In one town, a city council member praised the beauty of Bradford pear trees, while in another an official condemned them as an "epidemic."

People are different.

During our visit, Steve Kellenberg comes back to that message again and again, expressing a tolerance that arises as much from relentless pragmatism as from liberal idealism. If you're in the business of designing environments people will pay money to live in, you can't kid yourself about what they value. You can't design your idea of utopia and force everyone to conform to it; if you try, everyone who isn't just like you will go elsewhere to find a home.

Unlike me, some people really do prefer uniformity to variety, regardless of cost. Not everybody thinks it's bad if every house on the street looks pretty much like every other one, or if people can't change their houses much over time. Some people *like* that sort of predictability. It makes them feel secure, at home in their neighborhood. Even if cost were no object, not everybody would want the same thing I'd pick.

"We have this incredible tendency to overgeneralize about the population and to say, 'Everybody wants this—everybody wants to live in a community where you can't paint your house unless it's the right color and you have to close your garage door,'" says Kellenberg. "Well, the fact is that there really are a lot of people who want that kind of controlled, predictable environment," often because they've had bad experiences in deteriorating neighborhoods. "And there are others that find that an incredibly repressive regime and wouldn't live there if you *gave* them a house, because they believe there should be an organic, fluid, self-expressive environment."

People are different.

"You have people in Irvine that love living in Irvine," he says. "And you have people that moved to Irvine and leave after five years because they hate it, and they move to Seal Beach or Santa Ana," nearby towns with few design restrictions. In a diverse society, some people will indeed want a lot of rules, "but it clearly isn't something that is *the right way* of doing it for everybody." Neither is the alternative.

People are different.

Even those survey statistics are misleading aggregates. Some people care a lot about diversity; others really, really want consistency. A lot are in the middle. Some people want to be sure to run into their neighbors. Others just want to stay in with their big-screen TVs or to socialize with the friends they already have. Some people want to be able to walk to the store without seeing a car. Others want to be able to drive in and out easily. The difference isn't one of demographics—age, income, education, and so on—but of identity and attitude. You can find people shopping for houses in the same price range, for the same size families, who want all sorts of different neighborhood designs.

What the survey numbers actually say is that part of the housing market has been underserved. For years, large-scale developers have focused so much on those homebuyers who want a predictable environment and the most house for the money that they've ignored people with other preferences. Offer the long-ignored groups a different sort of design, and they'll reward you handsomely. This pragmatic, trial-and-error process of discovering new sources of aesthetic value is less grandiose, and perhaps less inspiring, than the ideological search for the one best way to live. But it is also less divisive and venomous.

You can see its latest products in the spanking new streets of Ladera Ranch, a huge new development about a half-hour drive southeast of Irvine. A blue-gray Cape Cod home, with the deeply sloping roof of its saltbox ancestors, sits next to an updated beige and brown Craftsman with a low-pitched roof. Down the street is a Spanish colonial with a red-tile roof, and around the corner a stuccoed house whose turret recalls the fantasy homes of 1920s Los Angeles. Although many garages face the street, most are recessed so they don't dominate the landscape. You see porches and yards and sidewalks—social space. And between the sidewalk and street is something no new Southern California community has gotten in a generation: a small parkway planted with trees, spindly today but promising charm and shade as the neighborhood ages.

These are mass-produced homes, with metal windows and Hardiboard concrete siding rather than wood. They'd never pass purists' tests of authenticity. But they offer something genuine and rare—variation in more than façade, rooflines and massing that match their styles, a street of different colors and different forms. Built on the empty hillsides of what once really was a ranch, Ladera Ranch is turning the previously unfulfilled desire for varied and sociable neighborhoods into extraordinary profits. The development sells 1,200 houses a year for prices 10 percent to 14 percent higher per square foot than in the more conventional com-

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munity right next door. The landscaping and construction quality cost more, acknowledges Kellenberg, but even accounting for those costs, "it still appears that there's a 7 to 10 percent lift in the base values that can only be explained by people being willing to pay more to live there."

People are different.

Specialization pays. "There really is a lot of the market that doesn't want everything to look the same, that does want to have individuality in their home, that does want a diversity of neighborhoods, that wants [the design] to feel like it grew out of the heritage of the place, that are interested in meeting their neighbors, that would enjoy having the street designed as a social space, that would like to have other social spaces and social opportunities that they could participate in," he says.

Ladera Ranch's design owes much to the New Urbanism, a planning philosophy that favors high densities, limited setbacks, and old-fashioned Main Streets. Both put an emphasis on community, and both understand streets as social spaces. But Kellenberg dismisses the New Urbanism's one-size-fits-all doctrines, its "singular mission" that "rejects everything other than New Urbanism." Lots of beloved neighborhoods, he notes, don't conform to New Urbanist prescriptions.

The design for Ladera Ranch isn't New Urbanism. It's specialization—specialization within specialization, in fact. The development includes four different neighborhood styles, each crafted to suit a different personality and lifestyle. And if you want something different, you don't have to buy a place in Ladera Ranch. You can go next door. There's something for everyone and, if there isn't, a smart developer will figure out how to fill in the gaps.

The seeming homogeneity of master-planned communities—the planning that gives them a bad name among intellectuals—turns out to be real-world pluralism once you realize that everyone doesn't have to live within the same design boundaries. Community designs and governance structures are continuously evolving, offering new models to compete with the old. This pluralist approach may overturn technocratic notions of how city planning should work, but it's the way towns are in fact developing in the United States, suggesting that these institutions offer real benefits to residents. From 1970 to 2002, the number of American housing units in homeowner associations, including condominiums and cooperatives, rose from 1 percent to 17 percent, with more than half of all new units in some areas in these associations.

As an alternative or supplement to large-scale local government, some economists (notably Robert Nelson of the University of Maryland) and legal scholars (such as Robert Ellickson of Yale) have begun debating ways to let homeowners who aren't in private associations form them, whether for whole neighborhoods or just a few blocks. Some proposals envision the privatization of former city services such as garbage collection and zoning-style regulations. Others involve only a specialized complement to city governance, with special fees to cover services that people in that small area particularly value. For instance, Ellickson suggests, "if artists were to concentrate their studios on a particular city block, their [Block Improvement District] could make unusually heavy expenditures on street sculptures. Indeed, the prospect of forming a Block Improvement District might encourage artists to cluster together in the first place."

Some of these plans would require unanimous agreement, others a supermajority. The question of whether new boundaries can be drawn around residents without their individual consent is a difficult one. If unanimous agreement is necessary, a single holdout can make everyone worse off. But retroactively limiting what property owners can do with their homes raises the same problems that allowing small districts is supposed to avoid.

This problem is especially great when the new district isn't truly self-governing. Many cities, for instance, allow a supermajority of homeowners to petition to make their neighborhood a historic district subject to special aesthetic controls—potentially a good model of specialized design boundaries. Unfortunately, historic districts usually have to conform to procedures established by a higher level of government. They can't create processes and rules tailored to the wishes of those they govern. In Los Angeles, for instance, a Historic Preservation Overlay Zone is regulated by a five-member board. Unlike a homeowner association board, members are appointed by city officials and other board members, and only three of the five must be residents of the area they govern. Since residents don't have a direct vote, they can't easily predict, or check, the board's actions.

Even some preservation activists admit to concerns. Adriene Biondo, a San Fernando Valley resident who's campaigning to make her neighborhood a historic zone, says she isn't looking to crush individual homeowners' self-expression, only to raise awareness of the history and value of the neighborhood's mid-century Eichler homes. But some local preservationists are sticklers for architectural authenticity, narrowly defined. If the board is captured by purists, admits Biondo, it might even outlaw the pistachio-

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green siding she and her husband chose to match their vintage car. "I don't think we'd like that too much ourselves," she says.

Even in the best of circumstances, small, self-governing districts wouldn't eliminate aesthetic conflict. Neither do master-planned communities. As anyone who's lived in a small condo complex knows, even small groups of people disagree. Governance rules simply provide processes for resolving disputes. And they help people know what to expect, avoiding the nasty surprises and bitter conflicts that result when aesthetic rules are imposed after the fact. The best we can hope for isn't perfection but fairness, predictability, and a reasonable chance of finding rules that suit our individual preferences. The advantage of narrow boundaries is that if all else fails, we can vote with our feet, not only improving our own situation but sending a signal that the competition is offering a better design package.

To attract a diverse group of employees, to avoid turning off independent or creative individuals, or simply to stay up to date as fashions change, it may be better to keep the dress code as general as possible.

The more difficult it is for people to enter and exit—to find design rules to their liking—the more general the rules need to be. A four-block special district can have very prescriptive rules that would be inappropriate for an entire city. A metropolitan area like Orange County that is made up of many smaller cities can offer a range of city-level design regimes.

In larger areas, one way to accommodate different tastes within an overall sense of structure is to make the rules fairly generic. Consider the difference between a work uniform, a requirement to wear black, and a general prescription for "business casual." All three establish an organizational identity, but each allows more individual choice and flexibility than the previous one, accommodating a wider range of appearance and personality. To attract a diverse group of employees, to avoid turning off independent or creative individuals, or simply to stay up to date as fashions change, it may be better to keep the dress code as general as possible.

Along similar lines, Brenda Scheer suggests that urban design regulations should pay more attention to the urban forms that are hard to change and concentrate less on the stylistic details that are easily altered. It's easy enough to ignore a single building you don't like, especially once it's been around a while. But street widths, setbacks, and lot sizes affect the whole experience of being in a particular neighborhood. They establish the underlying structure that creates the sense of place. "If you get the lots right and the blocks right and the street right and the setbacks right, somebody can build a crummy house and it will sit there for 30 years, and somebody will tear it down and build a nice one," she says. "There's a kind of self-healing process that's available if the structure is fine."

This model allows for flexibility, personal expression, and change while still preserving a coherent underlying design. It echoes the pattern identified by Stewart Brand in *How Buildings Learn*, which examines how buildings are adapted to new uses over time. Brand explores what makes architecture resilient and capable of "learning" as its purposes change. A building, he notes, contains six nested systems: Site, Structure (the foundation and load-bearing elements), Skin (the exterior), Services (wiring, plumbing, heating, etc.), Space plan (the interior layout), and Stuff. The further out the nested system, the more permanent. Moving around furniture (Stuff) is easy; altering a foundation (Structure) is difficult.

In a building, Brand writes, "the lethargic slow parts are in charge, not the dazzling rapid ones. Site dominates Structure, which dominates the Skin, which dominates the Services, which dominate the Space plan, which dominates the Stuff. How a room is heated depends on how it relates to the heating and cooling Services, which depend on the energy efficiency of the Skin, which depends on the constraints of the Structure....The quick processes provide originality and challenge, the slow provide continuity and constraint."

A well-designed, adaptable building, Brand argues, respects the different speeds and different functions of these nested layers. It keeps them separate, allowing "slippage" so that the quick inner layers can change without disrupting the more permanent systems. (You don't have to tear up the foundation to fix the plumbing.)

Scheer's proposal applies a similar model to the surrounding environment. She essentially adds a seventh layer

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we can call the Street. By limiting design restrictions to the Street, Site, and possibly Structure, rather than the usual obsession with Skin, she makes room for evolution and learning. Like Brand, she emphasizes the effects of time. Given enough slippage between outer and inner layers, we can correct flaws and adapt to changing circumstances while preserving some underlying sense of order. A city, she says, is "a living thing, it's a changing thing, and it has to adapt or it dies. A city that is not having a continuous renewal is a dying place."

A dynamic model of city life recognizes that not just purposes or technologies change over time. So do tastes. Like Capri pants and stiletto heels, aesthetic styles go in and out of fashion, flipping from positive to negative and back again. Hard as it is to believe today, from the end of World War II until the 1980s the Art Deco hotels of Miami Beach were considered "tacky, in bad taste, and old fashioned." When the Miami Design Preservation League was formed in 1976, recalls one of its founders, South Beach "was considered a disgrace to the city, because of its cheap neon lights, 'funny-shaped' buildings, and the signs along Ocean Drive blaring 'rooms $5 a week.'"

Similarly, American tastemakers have for decades condemned neon signs as the epitome of commercial tackiness, and many cities continue to ban neon. Others, however, have rediscovered the lively pleasures of the lights. While some neighboring cities such as Santa Monica have been forcing businesses to take down their neon signs, Los Angeles has spent about a half million dollars helping building owners restore and relight historic neon signs. The city's Museum of Neon Art not only preserves vintage signs but lends them to the popular Universal CityWalk outdoor shopping area. Commercial neon has slowly regained its 1920s status as a source of public pleasure.

The built environment is filled with once-scorned designs that have become architectural touchstones or popular icons. When it was new, a critic called the Golden Gate Bridge an "eye-sore to those living and a betrayal of future generations." Writing in *Architectural Record*, critic Suzanne Stephens provides a wide-ranging tour of similar examples: "In 1889 artists, architects, and writers, including Charles Garnier and Guy de Maupassant, called the Eiffel Tower 'useless and monstrous.' Frank Lloyd Wright's Larkin Building in Buffalo was deemed 'ugly' by eminent critic Russell Sturgis in [*Architectural*] RECORD in 1908, and in 1959 his Guggenheim Museum was dismissed by visionary architect Frederick Kiesler. In 1931 Lewis Mumford charged that New York's Chrysler Building by William Van Alen was full of 'inane romanticism' and 'void symbolism.'" Some of the world's most beloved buildings and architects have been dismissed by their contemporaries. Tolerating strange styles can create significant value over time, as the unfamiliar becomes familiar, leading to aesthetic appreciation.

Aesthetics may be a form of expression, but it doesn't enjoy the laissez-faire treatment accorded speech or writing. To the contrary, the more significant look and feel become, the more they tend to be restricted by law.

Aesthetics may be a form of expression, but it doesn't enjoy the laissez-faire treatment accorded speech or writing. To the contrary, the more significant look and feel become, the more they tend to be restricted by law. The very power of beauty encourages people to become absolutists—to insist that other people's stylistic choices, or their tradeoffs between aesthetics and other values, constitute environmental crimes. Individuals may expect more expressive freedom for themselves, but they often feel affronted and victimized by the aesthetic choices of others. This is particularly true for places, the touchstone category of our aesthetic era.

Yet now that people increasingly care about look and feel in their private choices, aesthetic regulation is less necessary to control blatant public ugliness. The same taste shift that has made the spread of design review politically viable is slowly but surely changing the definition of what's commercially necessary. Our greatest fears of the aesthetic future are not of too little design, but of too much. ▮

Virginia Postrel (vpostrel@dynamist.com) is the author of The Substance of Style: How the Rise of Aesthetic Value Is Remaking Commerce, Culture, and Consciousness (HarperCollins), from which this article is adapted.
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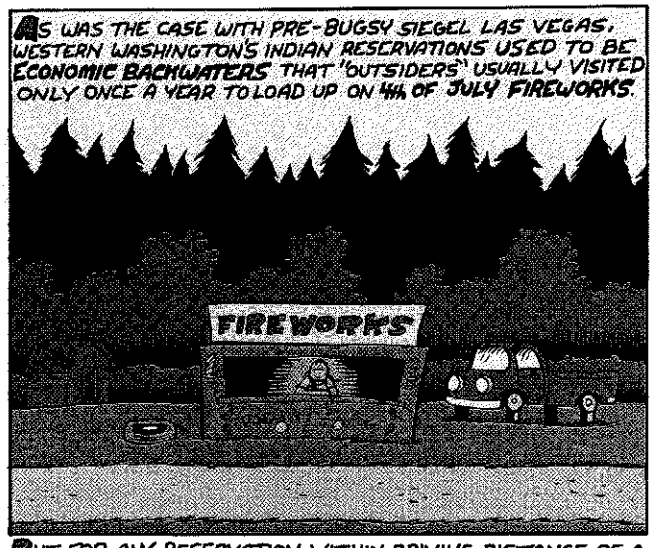
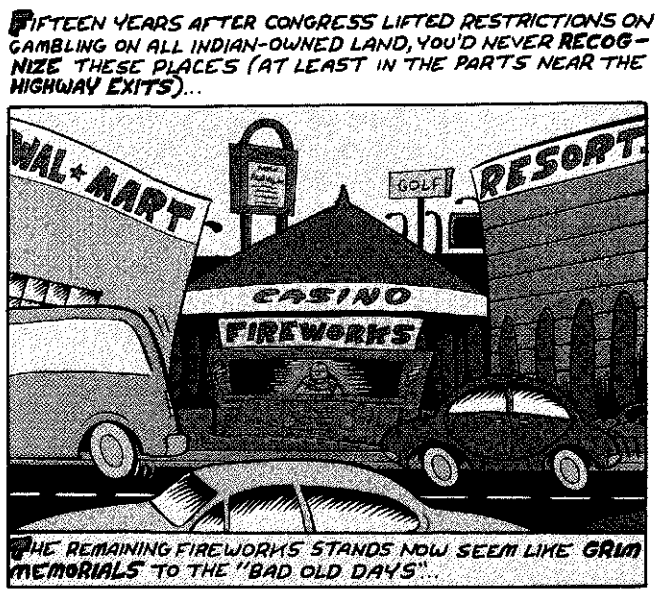
EVERYONE'S A WINNER!
ONE STATE'S — AND ONE PERSON'S — LOVE/HATE RELATIONSHIP WITH LEGALIZED GAMBLING
BY PETER BAGGE 2003 (PETERBAGGE@EARTHLINK.NET)
JUNE 2003: THE GRAND OPENING OF THE TULALIP INDIAN TRIBE'S BRAND NEW CASINO, 30 MILES OR SO NORTH OF SEATTLE, WA...
THE "OLD" CASINO WASN'T EVEN ALL THAT OLD, WHICH MAKES THIS PLACE REEK EVEN MORE OF "WE'RE MAKING SO MUCH MONEY WE DON'T KNOW WHAT TO DO WITH IT!"
WOULD YA LOOM AT THAT...
LOVELY...
GIVEN ITS NEAR-VEGAS PROPORTIONS, ONE COULD ALMOST IMAGINE THE RAT PACK SASHAYING THROUGH ITS DOORS...
WHAT IS, AS LONG AS YOU IGNORED THE BUSLOADS OF SCHLUBBY, LATE-MIDDLE-AGED COUPLES SHUFFLING IN AND OUT INSTEAD.


AS WAS THE CASE WITH PRE-BUGSY SIEGEL LAS VEGAS, WESTERN WASHINGTON'S INDIAN RESERVATIONS USED TO BE ECONOMIC BACKWATERS THAT "OUTSIDERS" USUALLY VISITED ONLY ONCE A YEAR TO LOAD UP ON 4th OF JULY FIREWORKS.
FIREWORKS
BUT FOR ANY RESERVATION WITHIN DRIVING DISTANCE OF A MAJOR CITY, THINGS WERE ABOUT TO CHANGE DRASTICALLY...


FIFTEEN YEARS AFTER CONGRESS LIFTED RESTRICTIONS ON GAMBLING ON ALL INDIAN-OWNED LAND, YOU'D NEVER RECOGNIZE THESE PLACES (AT LEAST IN THE PARTS NEAR THE HIGHWAY EXITS)...
WAL★MART
GOLF
RESORT
CASINO
FIREWORKS
THE REMAINING FIREWORKS STANDS NOW SEEM LIKE GRIM MEMORIALS TO THE "BAD OLD DAYS"...

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LIKE ALL GOVERNMENTS EVERYWHERE SINCE THE DAWN OF TIME, WASHINGTON STATE HAS ALWAYS HAD A **CONVOLUTED HISTORY** WITH GAMBLING—STARTING RIGHT OFF THE BAT BY **BANNING IT ENTIRELY** IN IT'S 1889 CONSTITUTION, WHICH MUST HAVE BEEN **VIRTUALLY UNENFORCABLE** BACK THEN!

ALL RIGHT, YOU **WAGERIN' SCOFFLAWS!** YOU'RE ALL UNDER AR—

BLAM! BLAM! BLAM!

I'LL RAISE YOU A **HUNNERT**...

A CENTURY'S WORTH OF **RECESSIONS** AND **BUDGET DEFICITS** FORCED THE STATE TO GRADUALLY EASE UP ON GAMBLING-RESTRICTIONS. IN '82 IT STARTED IT'S OWN **STATE-RUN LOTTERY**...

...YA GOTTA BE IN IT TO WIN IT!

FIVE **LOTTO** TICKETS, PLEASE...AND A PACK OF **SALEMS**...

I'M FEELIN' **LUCKY!**

PLAY LOTTO

WHICH IT SOLD TO THE PUBLIC BY DEDICATING 100% OF THE PROCEEDS GO TO **"EDUCATION"**—A **BALD-FACED LIE** THAT LOCAL POLITICIANS CONTINUE TO GET AWAY WITH.

THEN CAME THE NATIONWIDE **CASINO EXPLOSION** OF 1988, WHEN **FULL-FLEDGED GAMBLING OPERATIONS** WERE SUDDENLY ALLOWED ON INDIAN RESERVATIONS...

SORRY, "CHIEF," BUT FILTHY INJUNS LIKE YOU ARE **BAD FOR BUSINESS**.

WELCOME TO THE **BIG HEAP WAMPUM** CASINO

PAWN SHOP

NOW PLAYING RED BONE

LIQUOR

DIRE PREDICTIONS SOON FOLLOWED OF "THE MOB" MUSCLING IN; OF NATIVE AMERICANS LOSING THEIR **"SOUL"** AND OF THE REST OF US BECOMING **HOPELESS GAMBLE-AHOLICS**...

SIGH... INJUNS ALWAYS LOSE OUT TO **WHITE MAN**...

NONE OF WHICH HAS **HAPPENED**, THOUGH ANTI-GAMBLING GROUPS—LIKE **ALL** PROHIBITIONISTS—STILL WILL ALWAYS CITE THE EXCEPTIONS THAT (TO **THEM**) **PROVE THE RULE**.

THE SUCCESS OF THESE CASINOS PRODUCED INEVITABLE **HOWLS OF PROTEST** FROM NON-TRIBAL **TAVERN** AND **CARD ROOM OWNERS**, WHO DEMANDED EQUAL (OR AT LEAST **BIGGER**) PIECES OF THE GAMING PIE.

YOU GET TO HAVE **SLOT MACHINES** WHILE I HAVE TO SETTLE FOR **PULL TABS**?!

WE CONSIDER IT **JUST COMPENSATION** FOR 500 YEARS OF OPPRESSION AND **GENOCIDE**...

LUCK O'THE IRISH

TRY YOUR LUCK

OH YEAH? WELL I CALL IT A **RIP-OFF!**

THIS HAS LEAD TO EVEN **MORE** EASING OF RESTRICTIONS FOR ALL, AS WELL AS **COUNTER** HOWLS OF PROTEST BY THE **TRIBES**.

THE STATE NOW ALLOWS **"ENHANCED" CARD ROOMS**, WHERE THE PATRONS CAN BET AGAINST THE HOUSE INSTEAD OF JUST **EACH OTHER**. AS A RESULT, WASHINGTON IS NOW EXPERIENCING A **GLUT** OF THESE SELF-DESCRIBED **"MINI-CASINOS"**...

SULIA'S

SILVER DOLLAR CASINO

CLIFF'S CARD ROOM

Golden Nugget

DRIFT ON INN

PARKER'S

THESE "MINIS" WOULD LOVE TO BE **REAL** CASINOS, BUT CONTINUING RESTRICTIONS, ESPECIALLY ON **SLOTS**, FORCE THEM TO REMAIN **PALE** (HA HA) **IMITATIONS** OF THE TRIBAL PALACES.

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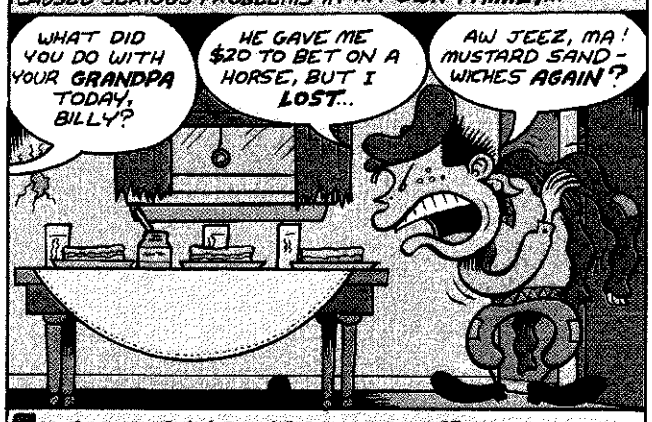
THE GRAND OPENING OF THE NEW TULALIP CASINO COINCIDED WITH A **VISIT** BY MY SISTER AND HER HUSBAND. WHILE MY BRO-IN-LAW AND I WERE TRYING TO THINK OF SOMETHING "TOURISTY" TO DO, MY NEIGHBOR MADE A **SUGGESTION**...

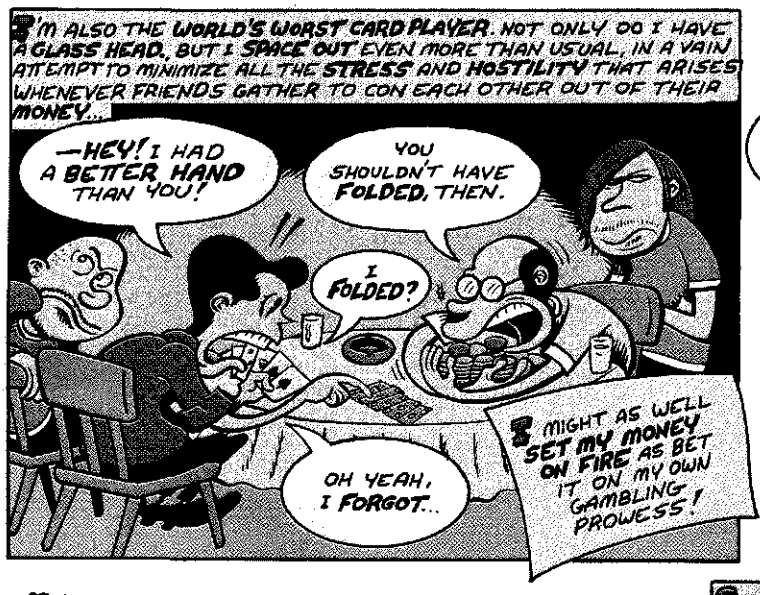
KNOWING A POTENTIAL **REASON FEATURE** WHEN I HEAR ONE, I AGREED, ALBEIT WITH SOME **TREPIDATION**...

THE TRUTH IS, I HAVE A DEEP **DISLIKE** AND **DISDAIN** FOR GAMBLING, FUELED IN PART BY THE FACT THAT IT'S CAUSED SERIOUS PROBLEMS IN MY OWN **FAMILY**...

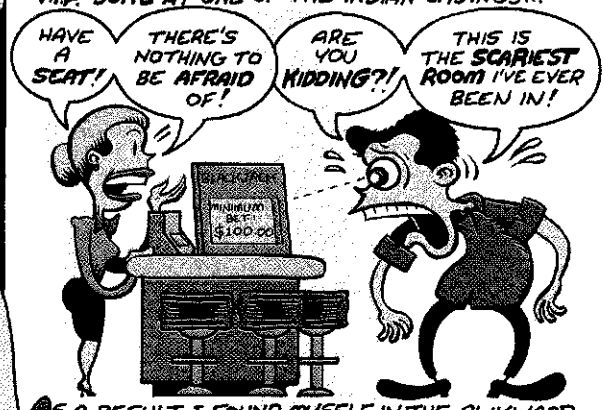


FOR EXAMPLE, MY GREAT-GRANDFATHER PIDDLED AWAY MOST OF HIS FORTUNE AT THE **TRACK** WHILE HIS OWN SON'S FAMILY LIVED ON **MUSTARD** AND **KETCHUP SAND-WICHES** DURING THE DEPRESSION!

I'M ALSO THE **WORLD'S WORST CARD PLAYER**. NOT ONLY DO I HAVE A **GLASS HEAD**, BUT I **SPACE OUT** EVEN MORE THAN USUAL, IN A VAIN ATTEMPT TO MINIMIZE ALL THE **STRESS** AND **HOSTILITY** THAT ARISES WHENEVER FRIENDS GATHER TO CON EACH OTHER OUT OF THEIR **MONEY**...


—**HEY**! I HAD A **BETTER HAND** THAN YOU!
YOU SHOULDN'T HAVE **FOLDED**, THEN.
I **FOLDED**?
OH YEAH, I **FORGOT**...
I MIGHT AS WELL **SET MY MONEY ON FIRE** AS BET IT ON MY OWN GAMBLING PROWESS!

SO NOW I FEEL A SENSE OF **PANIC** WHENEVER SOMEONE ENCOURAGES ME TO GAMBLE—LIKE WHEN I ACCIDENTALLY WALKED INTO SOME **HIGH-STAKES "V.I.P." SUITE** AT ONE OF THE INDIAN CASINOS...

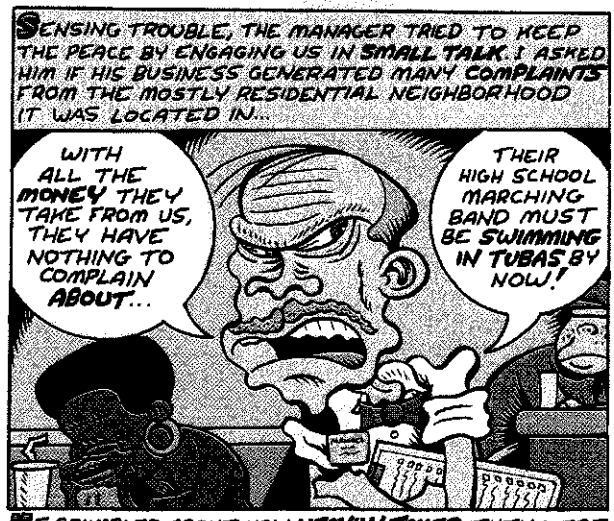


AS A RESULT I FOUND MYSELF IN THE AWKWARD POSITION OF TRYING TO **WRITE** ABOUT GAMBLING WHILE BEING **AFRAID TO GAMBLE**!

MY BRO-IN-LAW HAD **NO SUCH QUALMS** HOWEVER. HE IMPULSIVELY TRIED HIS HAND AT **HIGH-TURNOVER** "SUCKER" GAMES LIKE "FORTUNE PAI GOW" AND "THREE CARD POKER" AT ONE OF THE MANY MINI-CASINOS WE ALSO HIT THAT DAY...

TRYING TO LEARN THESE GAMES PROVED TO BE **IMPOSSIBLE**, THOUGH, SINCE THE DEALER KEPT **CHANGING THE RULES** ON HIM, AND THEN "FORGOT" HOW TO SPEAK ENGLISH WHEN **CALLED ON IT**.

SENSING TROUBLE, THE MANAGER TRIED TO KEEP THE PEACE BY ENGAGING US IN **SMALL TALK**. I ASKED HIM IF HIS BUSINESS GENERATED MANY **COMPLAINTS** FROM THE MOSTLY RESIDENTIAL NEIGHBORHOOD IT WAS LOCATED IN...


WITH ALL THE **MONEY** THEY TAKE FROM US, THEY HAVE NOTHING TO COMPLAIN **ABOUT**...
THEIR HIGH SCHOOL MARCHING BAND MUST BE **SWIMMING IN TUBAS** BY NOW!

WE GRUMBLED ABOUT HOW **HEAVILY TAXED** THEY WERE BY THE LOCALS—UP TO 20% OF THE **GROSS**!—ALL OF WHICH IS "EARMARKED" FOR **EDUCATION**, OF COURSE.

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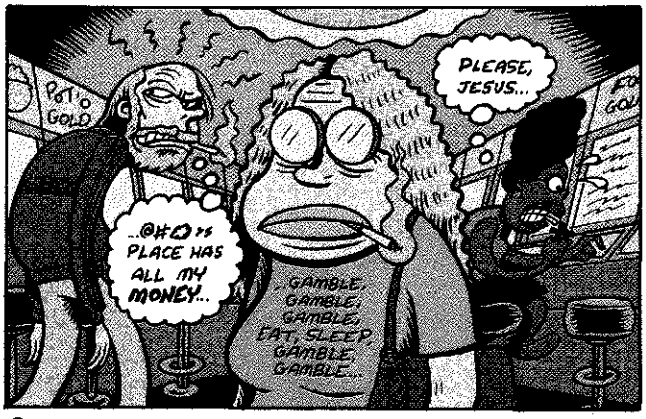
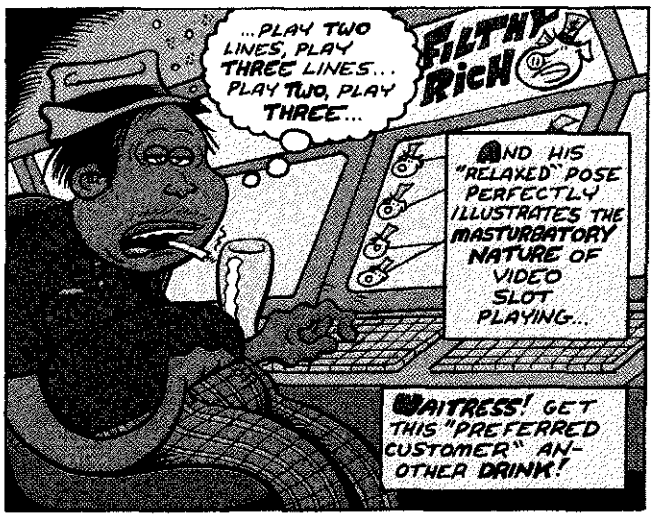
As for that slick new Indian casino... I dunno... its newness alone makes it feel awfully sterile, in spite of its shabby patrons...



Casinos make for great people watching, though these "tornado targets" are hardly the beautiful people. As my friend's grandma used to say, these folks "look like Pearl Harbor—all shot to hell!"

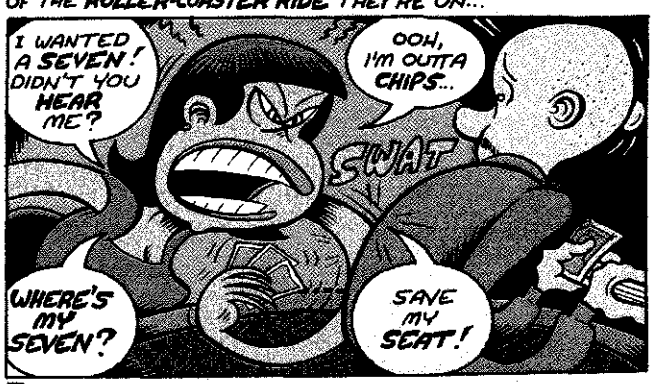
Take exhibit A, "Mr. Slots." At some point he hit on some pattern that briefly paid off for him, and now he's gonna stick with it until his finger falls off...


...play two lines, play three lines... play two, play three...
Filthy Rich
And his "relaxed" pose perfectly illustrates the masturbatory nature of video slot playing...
Waitress! Get this "preferred customer" another drink!

Then there's the genius oddsmaker at the roulette table, carefully distributing an entire paycheck's worth of chips all over the board—4 chips here, 6 chips there, as if it makes any difference—thus insuring that he'll be roughly breaking even all day...

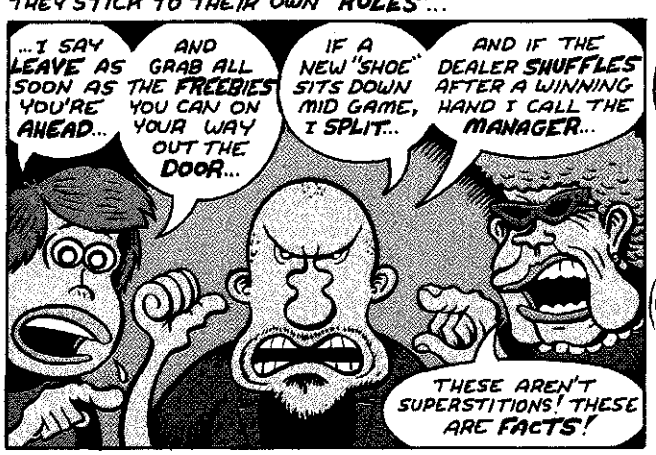
Meanwhile, outside the sun is shining, and the birds are singing...

Also on display are a lot of extreme, unsavory types, the most distressing of which are the adrenaline-fueled compulsives, who are unwilling or unable to get off of the roller-coaster ride they're on...



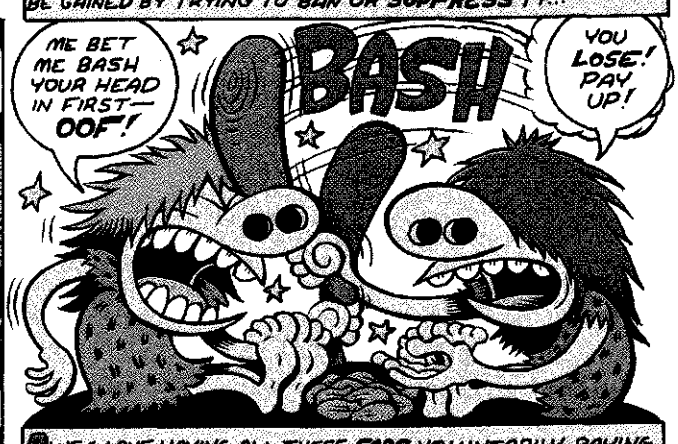
It's hard to gauge what damage, if any, the game of blackjack is doing to this woman's overall well-being, but it sure isn't hard to imagine the worst.

Equally depressing are all the desperate pet "theories" and "systems" that regular gamblers all swear by. These people never lose—oh, no—not as long as they stick to their own "rules"...


...I say leave as soon as the freebies you're ahead...
And grab all the freebies you can on your way out the door...
If a new "shoe" sits down mid game, I split...
And if the dealer shuffles after a winning hand I call the manager...
These aren't superstitions! These are facts!

If these folks devoted as much time and energy to any other endeavor, they'd all be huge successes!

But in spite of all my ranting, I'm still 100% in favor of legal, unrestricted gambling. People have always gambled and always will, and there's nothing to be gained by trying to ban or suppress it...



Plus I love having all these saps voluntarily paying more than their fair share in taxes. Thanks, saps! And don't forget: it all goes toward "education"!

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Enough Already

A leading environmentalist makes a foolish case against technological innovation.

Ronald Bailey

Enough: Staying Human in an Engineered Age, by Bill McKibben, New York: Times Books, 288 pages, $25

Environmentalist Bill McKibben has had enough, and he thinks you've had enough too. That's why he wants to stop the development of biotechnology, nanotechnology, and robotics in their tracks. McKibben fears that, if unchecked, these technologies will transform human life ruinously. "*These are the most anti-choice technologies anyone's ever thought of*," he insists (the emphasis is his). "In widespread use, they will first rob parents of their liberty, and then strip freedom from every generation that follows. In the end, they will destroy forever the possibility of meaningful choice."

That claim is not only complete nonsense, it is exactly backward.

According to McKibben, science and technology have long been destroying human meaning. "Meaning has been in decline for a very long time, almost since the start of civilization," he asserts. In his neo-Romantic view, humanity once lived in an enchanted world in which every rock, tree, cloud, or bird was imbued with spirit and intention. Our ancestors' theory of the natural world was that objects and creatures behaved much as they themselves did.

It turns out that such animism is wrong, but that hasn't resulted in a world drained of meaning. It's just that modern humanity has better explanations for why things do what they do. That's not an absence of meaning; it's different, better meanings. But for McKibben, ignorance of the natural world was, in some sense, bliss.

Ignorance also plays a big role in underwriting McKibben's notion of human liberty. McKibben accepts that the fondest dreams of the proponents of human genetic engineering eventually could come to pass. Yes, he admits, advanced biomedical science could someday spare children from congenital diseases, cure cancers, correct disabilities, and lengthen the human life span.

But for McKibben, this is a dismal prospect. He argues that parents who choose to use genetic engineering will end up turning their children into "robots" and "automatons." "Down that path," he declared in a recent debate, "lies the death of what we call human meaning, the idea that people are in some way their own human beings and are not pre-programmed semi-robots."

> Bill McKibben indulges in genetic essentialism, the unwarranted idea that we are just meat puppets dangling from our strands of DNA.

Liberty apparently lies in our ignorance of our genes. Human freedom, McKibben believes, depends in some profound sense on the random inheritance of the genes that are the recipes for our bodies and brains. As a result of this random genetic inheritance, he suggests, we have greater scope for freedom than if our genes had been chosen for us. It turns out that McKibben is indulging in genetic essentialism, the unwarranted idea that we are just meat puppets dangling from our strands of DNA.

Yet if he really believes that human freedom depends on inheriting a random selection of genes, his cause is already lost. Why? Genetic testing. Even McKibben recognizes that such testing will soon be here. "The biotech pioneer Craig Venter said in 2002 that within five years a personalized printout of an individual's genetic code would be cheap enough for anyone to buy, so you'll probably be able to afford it late next week or so," he writes. Genetic testing will enable every one of us to know precisely our entire complement of randomly acquired genes. The good news is that we will then know our predispositions to various diseases, enabling us to take steps to delay their onset or even prevent them altogether.

McKibben, however, will not be pleased. To him, such knowledge must be a blow to our freedom because we will also know a lot more about how our particular sets of genes influence our temperaments, our intelligence, our abilities to form memories, and our physical capacities. Of course, that knowledge may well expand our freedom and our choices by making it possible for us to intervene by means of pharmaceuticals and optimized training to change our temperaments, improve our memories, or strengthen our bodies.

McKibben's fears that genetic engineering will reduce human freedom are misplaced. To the extent that genes "program" us, we are already "pre-programmed" by our randomly conferred genes; we are just ignorant about which ones are doing what programming. But as even McKibben acknowledges, that

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won't be the case in the near future. Will advances in genetic science destroy human freedom?

Quite the opposite. Providing children with such enhanced capacities as good health, stronger bodies, and cleverer brains, far from turning them into robots, would give them greater freedom and more choices. And any person would want to have these beneficial traits. Those of us who regard a poor immune system, a weaker body, or an IQ of 80 as privations likely will welcome the opportunity to help our children avoid such conditions, even as we try now to keep our children safe and healthy and to inspire and educate them.

McKibben objects that future gene-enhanced children will not have consented to receiving the genes selected by their parents. "The person left without any choice *at all* [emphasis his] is the one you've engineered," he asserts. "You've decided, for once and for all, certain things about him: he'll have genes expressing proteins that send extra dopamine to alter his mood; he'll have genes expressing proteins to boost his memory; to shape his stature."

To the extent that this is true at all, it is true for unengineered kids now. It's just that parents don't know which genes they've conferred on their children. Of course, they hope for the best—that their kids got the genes for good health, strong bodies, and sound brains. But there's always a chance they ended up with Grandma's genes for early heart disease or those that led to Uncle Jim's schizophrenia. Genetic engineering could help parents in the future avoid some of those harmful outcomes.

McKibben is right that a gene-engineered child would have no choice about whether to express the proteins that lead to early onset Alzheimer's disease, but it's a pretty good bet that kids won't regret their parents' decision to eliminate those deleterious genes. Before we accept McKibben's misleading concerns about a child's informed consent, we should keep in mind that not one of us now living was asked our consent to be born, much less to be born with the complement of randomly conferred genes that we carry.

McKibben is obviously right when he declares, "*genes do matter*" (emphasis his). But they don't matter as much as McKibben thinks they do. Take the case of monozygotic twins who share exactly the same genes and were formed in the same womb at the same time. They are certainly not identical people. In fact, traits such as intelligence, personality, and even weight correlate only 60 percent to 70 percent between identical twins. That's much closer than with nonidentical siblings, but the variance is still quite a lot. Biology increasingly reveals that human individuality doesn't depend just on having different genes; it is the result of the interplay between genes and environment.

Genes order the production of different proteins in response to environmental influences such as schooling, physical training, infections, and nutrition. Human genes are the necessary recipes for making human brains and bodies, but brains and bodies are manifestly shaped by their experiences. It might be possible someday, using genetic engineering, to give a child a brain smart enough to understand why Heidegger is wrong, but there is no getting around the fact that he will have to undergo the experience of learning about Heidegger first. There are no genes for Heidegger debunking.

McKibben worries that gene-enhanced people will not be challenged. This is nonsense. Genetic engineering may ease some of life's burdens, much as electricity and indoor plumbing have, but it will by no means remove the bulk of the individual and social challenges humanity faces.

McKibben fears that our gene-enhanced progeny will know too much about themselves

The Stranger (cover detail)

Stranger in a Strange Land

The enduring American appeal of existentialism

Vinda Elliott-Zerr

Of course I remember my first time. Only a true cad—or a true liar—doesn't.

When I look back on it, I was way too young—just 14. It happened, of all places, in the musty basement of the house I grew up in, during a lazy summer afternoon when for one reason or another my parents and siblings were gone and I had the place all to myself.

A square beam of dust-filled light streamed in from a small window, and I stumbled across a box filled with books whose pages were alternately brittle and yellowed and mildewed.

I picked up a small paperback with an odd cover and a cracked binding and squinted to read the book's first few lines, among the most famous in 20th-century literature: "Mother died today. Or, maybe, yesterday; I can't be sure..."

I spent the next two hours sitting on the basement's cool concrete floor, ripping through Albert Camus' seminal existentialist novel *The Stranger*. By the time I had finished »

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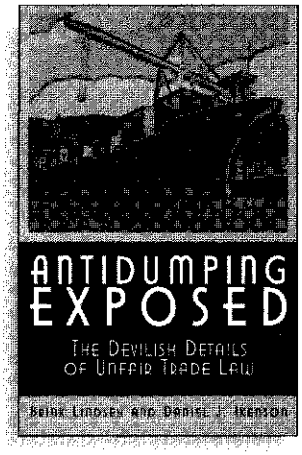

Antidumping Exposed: The Devilish Details of Unfair Trade Law

Brink Lindsey and Daniel J. Ikenson

You've heard the terms "fair trade" and "level playing field." Did you know they are euphemisms for protectionism? These fig leaves are used to justify harassment of foreign competitors under politically expedient antidumping rules. As the "Doha Round" of multilateral trade negotiations enters a critical phase, antidumping reform is shaping up to be a linchpin issue. Presently, the U.S. stands alone in opposing meaningful reform—an untenable position. In this book, the authors, from Cato's Center for Trade Policy Studies, explain how these insidious rules have endured, and why and how to promote a successful reform strategy.
228 pp./$24.95 cloth ISBN 1-930865-48-1

Available at bookstores nationwide.
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to stretch themselves to their limits and experience what psychologist Mihaly Csikszentmihalyi called "flow." "Just refer to your design specs," he quips. Flow is that peak experience in which people lose themselves as they practice their hard-won skills in challenging activities such as chess, bond trading, or rock climbing.

Take the example of rock climbing. Would McKibben require that people free-climb Half Dome in Yosemite? Is their experience diminished because they are encumbered with technologies such as ropes, pitons, and freeze-dried foods? Similarly, a gene-enhanced climber would still find challenges that test her boosted physical capacities to their limits. Flow arises from internal challenges, being the best that you can be. This experience, along with the experiences of joy, hope, and love, will not cease because a person is genetically enhanced. However enhanced our descendants may become, there will remain no end of physical and mental challenges in the world against which they can test and measure themselves.

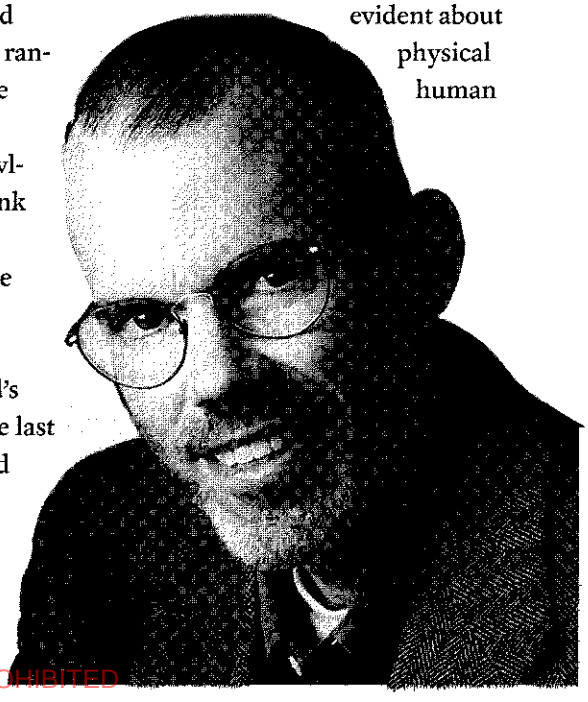
Human freedom cannot and does not rely on ignorance and randomness. Human freedom—the capacity to make choices based on reason—expands with knowledge. If you don't believe it, think about how humanity's greater knowledge of such things as the germ theory of disease and the atomic theory of matter have radically increased humankind's choices and freedom during the last two centuries. Most of us would agree that there has certainly been an improvement over our ancestors' world. That was a world filled with friendly and hostile animistic spirits, and one in which half of all children died before their first birthdays.

Similarly, knowledge about how our genes affect our behavior and how our brains are wired increases rather than limits our freedom. Prozac, for example, does not limit our choices; it gives depressed people the freedom to adjust their emotional state. Ignorance is not freedom. Knowledge is freedom; ignorance is slavery.

The alleged loss of meaning and the robotization of humanity are not McKibben's only concerns. He fears that genetic engineering will exacerbate inequality, even as he worries about homogenization.

In his first scenario, the rich will get access to safe genetic enhancements first, dramatically widening the gap between the rich and the poor. "The political equality enshrined in the Declaration of Independence can't withstand the destruction of the idea that humans are in fact equal," writes McKibben.

But hold on. Are people "in fact equal"? There is nothing at all self-evident about physical human



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equality or equality of status. Some people are short, some tall; some fat, others thin; some strong, others weak; some poor, others rich; some brilliant, others dim. In other words, what we see is not self-evident equality, but human particularity and human individuality.

In what relevant respect are people equal? The modern ideals of democracy and political equality are sustained chiefly by the insight, developed by Enlightenment thinkers, that people are responsible moral agents who can distinguish right from wrong and therefore deserve equal consideration before the law and a respected place in our political community. The broad ability to distinguish right from wrong does not depend on the genetics of IQ, skin color, or gender. With respect to political equality, genetic differences are already differences that make no difference. Having some citizens who take advantage of genetic technologies and others who do not will not alter that principle.

When he's not propounding dystopian visions of genetically enhanced *Übermenschen* lording over poor naturals, McKibben is worried that genetic technologies will be adopted rapidly because they will become cheap and widely available. Given the rapid pace of technological change, the latter is more probable. Therefore, safe genetic engineering is much more likely to reduce inequality than exacerbate it. Parents will have the option of giving their children the same genes for good health and smarter brains that some children get randomly now. Is this homogenization? Perhaps in some sense it is, but a world in which more people are smarter and healthier could hardly be an ethical or social disaster.

But something worse than mere genetic engineering fills McKibben "with blackest foreboding": the prospect of physical immortality. "It would represent, finally, the ultimate and irrevocable divorce between ourselves and everything else," he asserts. "The divorce, first of all, between us and the rest of creation."

McKibben would do better to ask why we would want to stay married to Nature anyway. She has certainly been an inconstant wife, liberally afflicting us with nasty surprises such as birth defects, diseases, earthquakes, hurricanes, and famines. An amicable separation might be good for both Nature and humanity. The less we depend on Nature for our sustenance, the less harm we do her.

Setting that aside, why does McKibben believe that death is good for us? "Without mortality, no *time*," writes McKibben. "All moments would be equal; the deep, sad, human wisdom of Ecclesiastes would vanish. If for everything there is an endless season, then there is also no right season. The future stretches before you endlessly flat."

If the endless future turns out to be as horrible as McKibben imagines it to be, then people will undoubtedly choose to give up their empty, meaningless lives. On the other hand, if people opt to live yet longer, wouldn't that mean they had found sufficient pleasure, joy, love, and even meaning to keep them going? McKibben's right: We don't know what immortality would be like. But should that happy choice become available, we can still decide whether or not we want to enjoy it. Even if the ultimate goal of this technological quest is immortality, what will be immediately available is only longevity. The experience of longer lives will give humanity an opportunity to see how it works out. If immortality is a problem, it is a self-correcting problem. Death always remains an option.

Given all his worries, what does McKibben want us to do? He wants us to say "enough" along with him and reject the Promethean prospects before us. Humanity should decide collectively

that relentlessly compelling tale of gratuitous murder and vague redemption—"all that remained to hope was that on the day of my execution there should be a huge crowd of spectators and that they should greet me with howls of execration," read the book's last words—my sense of the world had been shattered into a thousand pieces.

I didn't really understand *The Stranger* (I confess I still don't), but somehow it spoke to me, and I went on to devour Camus' other fiction and philosophical works, including "The Myth of Sisyphus" and *The Rebel* (another great opening line: "What is a rebel? A man who says no."). From there, I dug into the two other French figures most associated with existentialism in these United States: Jean-Paul Sartre and Simone de Beauvoir.

Soon enough, I firmly believed that "existence precedes essence" (something else I've never quite understood) and embraced the four *D*s that the critic Walter Kaufmann said defined existentialism: "dread, despair, death, and dauntlessness."

One of the great pleasures of reading George Cotkin's brilliant study *Existential America* (Johns Hopkins) is that it explains why existentialism has proved so deeply appealing and enduring in an American context—this, despite haughty claims by Camus, Sartre, and de Beauvoir that we were too shallow and upbeat a people, too lacking in metaphysical »

Bill McKibben, courtesy Henry Holt & Co.

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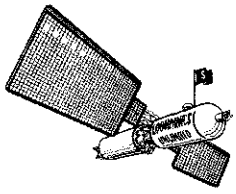

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to limit its technological questing once and for all. This is not an impossible dream, he thinks, because some societies have, at times, chosen to relinquish some technologies. The examples he wants us to follow, however, involve a pair of backward autocracies—15th-century Ming China and 17th-century Tokugawa Japan—and the contemporary Amish, an example that actually undermines his argument.

Here's McKibben's case for China. Between 1405 and 1430, the Chinese admiral Zheng He made at least seven major voyages with the largest fleet the world had ever seen. These "treasure fleets" consisted of 300 huge ships holding a troop of nearly 30,000 people. Zheng He's fleets visited Java, Sumatra, Vietnam, Siam, Cambodia, the Philippines, Ceylon, Bangladesh, India, Yemen, Arabia, and Somalia. McKibben praises the Chinese emperors who chose to burn the great treasure fleet and destroy all records of the voyages. To prevent further adventuring, these emperors made it a capital offense to build a boat with more than two masts. Thus, declares an approving McKibben, "a great people turned its back on a promising technology." He adds, "The Chinese chose their definition of meaning—progress within tradition—over the pell-mell dynamism of the West."

But did a "great people" really choose to forego the blessings of technology and trade? Isn't a far more reasonable interpretation that the rulers of China, who wanted nothing to disrupt their iron hold over the lives of their subjects, made that decision, not Chinese "society"?

Next, McKibben describes Tokugawa Japan as "a highly

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advanced feudal society." He praises it for outlawing firearms for two centuries. Why? Because "the samurai simply felt that guns were crude, that any peasant could use one," explains McKibben. Which is precisely the point—naturally the beneficiaries of a warrior feudal society would want to make sure that the "peasants" didn't get hold of such equalizers. The peasants didn't relinquish firearms; their masters did it for them. But who cares about the meanings of the lives of Japanese peasants who were so downtrodden that they were forbidden the dignity of legal family names until after 1867? McKibben thus approves of two societies in which technological progress was stifled for the benefit of their absolute rulers.

McKibben's mantra is always, "More is not better." That's true, and it's completely beside the point: Better is better. And better, like beauty, is in the eye of the beholder.

The third case cited by McKibben, the Amish, is different and proves the opposite of what he thinks it does. The Amish live in an open society—ours—and can opt out of our society or theirs whenever they want. They have a system for voluntarily deciding among themselves what new technologies they will embrace. But the fact that they live as they wish and select only the technologies they want dramatically undercuts McKibben's point. The Amish case shows that technological choices don't have to involve everyone in a given society.

Like the Amish, technophobes such as McKibben are free to say no to whatever technologies concern them. They do not have to genetically engineer their children or choose to live longer lives. McKibben should be content to allow the rest of us to use those technologies we believe will enhance and improve our lives and the lives of our children. McKibben's mantra is always, "More is not better." That's true, and it's completely beside the point: Better is better. And better, like beauty, is in the eye of the beholder.

McKibben eschews "hyperindividualism" in favor of one of the most destructive and oppressive political metaphors ever propounded. He wants us to think of "the human species as one large individual organism." The individual meanings of our lives are to be subsumed into the larger meaning of the whole species. Never mind that in the last century ideologies founded on this organic principle of subordinating individual meaning to the good of the whole ended up killing tens of millions of people. It's no wonder that he shows affection for despotic regimes like Ming China and Tokugawa Japan.

Of course, McKibben says he's for democracy as a way of choosing which limits to put on technological progress. "Happily for us, we have a system for dealing with competing ideas," he says. "It's called politics. We will have to *choose*." But *we* don't have to choose; *each one* of us must be allowed to choose for himself.

No matter how advanced, technologies—including genetic enhancement—are not ends; they are means for individuals to build the best lives they can for themselves and their families. Technological preferences, especially those that touch on the big issues of birth, disease, life, and death, are not democratic questions. They are personal questions. These private arenas should not be open to public decision making. For a man who says he favors human freedom and choice, McKibben is awfully eager to limit both.

Ronald Bailey (rbailey@reason.com), **reason***'s science correspondent, is the editor of Global Warming and Other Eco Myths (Prima Publishing) and Earth Report 2000: Revisiting the True State of the Planet (McGraw-Hill).*

anguish, to get what they were saying. Cotkin, a historian at California Polytechnic State University, details how existentialism in its French and Kierkegaardian forms hugely influenced people ranging from Whittaker Chambers to Richard Wright to Betty Friedan to Tom Hayden. He traces how existentialism similarly informed the Beats and the civil rights movements of the 1960s and makes a provocative case that the 9/11 attacks will keep it relevant for a long time to come.

"To be existential," writes Cotkin, "is to wrestle most fully with the jagged awareness of one's own finitude, with the thunderbolt fact that my death will be my own, experienced by no one else.... To be existential is to recognize, in the face of all these somber truths clutched close to our own sense of being, that we must act."

Cotkin's most original insight is something that escaped Camus and the others: "Existentialism, American style...jibes well with American antinomianism, that willingness of the lonely individual to rebel against entrenched authority in the name of his or her most intense beliefs. Antinomianism, like existentialism, challenges easy certitude, entrenched religion, and moribund political assumptions."

He rightly identifies figures as diverse as Jonathan Edwards, Herman Melville, Emily Dickinson, William James, Edward Hopper, and Walter Lippman as "existentialist precursors," each wrestling »

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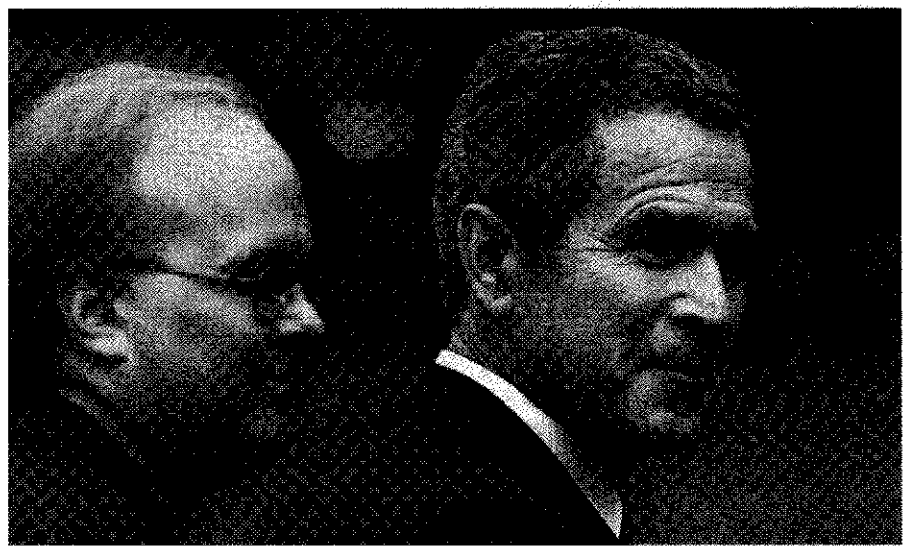
Accidental Genius

Is Karl Rove really Bush's brain?

John J. Pitney Jr.

Boy Genius: Karl Rove, the Brains Behind the Remarkable Political Triumph of George W. Bush, by Lou Dubose, Jan Reid, and Carl M. Cannon, New York: PublicAffairs, 253 pages, $15

Bush's Brain: How Karl Rove Made George W. Bush Presidential, by James C. Moore and Wayne Slater, Hoboken, New Jersey: John Wiley & Sons, 395 pages, $27.95



POLITICAL CONSULTANTS are like movie actors. A few achieve wealth and celebrity, even branding their tag lines onto our collective consciousness. James Carville's "It's the economy, stupid" is almost as familiar as Robert DeNiro's "You talking to *me*?" Seeing these examples, ambitious youngsters may try to follow their career path, not realizing that most people in the field never make the big time. Instead of clinking champagne glasses at ritzy receptions, the silent majority of consultants and actors must settle for store-brand beer and Cheez Whiz.

Elections turn on a wide array of forces, including economics, demographics, and sheer chance. Amid all of these variables, a well-executed campaign can lose, just as a troubled one can win. As soon as the outcome is clear, however, pundits credit the winners with brilliance and blame the losers for incompetence. The former become the subjects of books and the latter become questions in the political-junkie version of Trivial Pursuit.

When the Long Count of 2000 finally ended in a Bush victory, eyes turned to his lead strategist Karl Rove, the 52-year-old stalwart who has worked with Bush since his unsuccessful 1978 race for Congress and who has helped many Texas Republicans win in a onetime Democratic stronghold. Ever since the Supreme Court ruled that Bush was president, numerous press reports have analyzed Rove's influence, and he was even a character in the mercifully short-lived sitcom *That's My Bush!* Now we have two full-length biographies: *Bush's Brain* and *Boy Genius*.

There's no question that Rove is a smart political operative who deserves careful study. But it's important to remember how easily things could have been different. If a few hundred more voters in Florida's Palm Beach county had understood simple ballot instructions, Rove would be back in Texas, Gore would be in the White House, and Gore campaign manager Donna Brazile would be on the cover of a book titled *Girl Genius*.

Any study of a current political figure has inherent limitations. It is hard to get candid comments from people who must continue to work with the subject after the book is out. And aside from the occasional leak, private papers will stay out of reach until the archives open, far in the future. Within those constraints, both of these books about Rove have at least something to offer. Though one of them is often obscured by factual errors and reckless speculation, combined the two books paint a picture of an intelligent operative thrust by the exigencies of politics into an exalted position of perceived influence. That perception benefits both friends and foes of the Bush administration.

Boy Genius, by reporters Lou Dubose, Jan Reid, and Carl M. Cannon, is by far the better of the two. It offers a workmanlike analysis of the Texas political wars where Rove honed his skills and an overview of his role since Bush moved into the White House. Dubose and Reid wrote the Texas sections, and they show how Rove successfully halted a Democratic counterattack against burgeoning GOP dominance in that state by running a series of tough statewide campaigns. Drawing on the state's underlying conservatism and aided by Democratic missteps, Rove helped open the way for Bush's governorship and the GOP's near-total dominance in Texas politics today.

Veteran Washington journalist Carl Cannon wrote the section on the

Bush's Brain (cover detail)

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2000 election and the early Bush presidency. His treatment of the 2002 midterm is particularly valuable, as the president's party managed the unusual feat of gaining seats in both the House and Senate. Notwithstanding the GOP's rhetorical devotion to decentralization, Cannon describes a "top-down Bush era Republican Party" in which Rove made many of the key campaign decisions, including the emphasis on tax cuts and the recruitment of strong Senate candidates such as Norm Coleman of Minnesota.

In *Bush's Brain*, Texas journalists James C. Moore and Wayne Slater credit Rove with a vital decision

In Washington, there are two kinds of politicians with a stake in hyping Rove's influence: Republicans and Democrats.

that won Bush the 2000 campaign. Though West Virginia had long voted Democratic in close presidential races, Rove noticed that Clinton-Gore policies on gun control and the environment had irked the state's many hunters and mineworkers. He had the Bush campaign fight hard for the state while the Gore forces took it for granted. On election night, Bush won its five electoral votes, without which he would have lost the race.

The authors' account of the battle of West Virginia sheds some light on Bush's policies as president. Since the state is so pivotal, do not expect the administration to tack leftward on the Second Amendment or mining regulations. Supporters of limited government will find that much encouraging. On the other hand, the votes of West Virginia steelworkers were on policy makers' minds when they hiked steel tariffs last year.

Unfortunately, this intelligent account of Rove's West Virginia strategy is the only good thing about *Bush's Brain*. The rest is a mess—not just bad, but bad the way Steven Seagal movies, Yugo convertibles, and muskrat-flavored yogurt is bad.

To begin with, the book is disturbingly laden with factual errors. Moore and Slater say, for example, that Rove styled the 2000 Bush campaign "after the work of Mark Hanna, an industrialist at the turn of the twentieth century." Rove has indeed compared the current period to the McKinley era. But he has explained that the better-known Hanna was just the GOP's money man, whereas its chief strategist—and Rove's role model—was not Hanna but Charles Dawes. Then an obscure thirtysomething lawyer, Dawes went on to a stellar career as budget director, vice president, and winner of the Nobel Peace Prize.

Moore and Slater's error is important. By missing Rove's true influence, they botch an important lead. Rove's fascination with Dawes could offer important clues about his worldview. (*Boy Genius* does get the Dawes reference right, but doesn't do much with it. Any future biography of Rove ought to develop it in depth.)

Moore and Slater also say that Rove tried to counter the Bush-as-Dumbo image by planting a story in the *National Review* listing all the big books that Bush had read. John J. Miller, the author of the story, replied in the *National Review Online*: "This is flatly wrong—or at least seriously misleading. Rove was not 'the source of the article.' I did speak with him and quote him, but he was one source among many. He was not even the originating source of the story, in the sense that I got the idea for it somewhere else."

Where *Bush's Brain* is not provably wrong, it relies overmuch on uneducated speculation. For instance, the authors devote two chapters to a 1986 incident in which Rove claimed that someone had bugged his office. He was running the

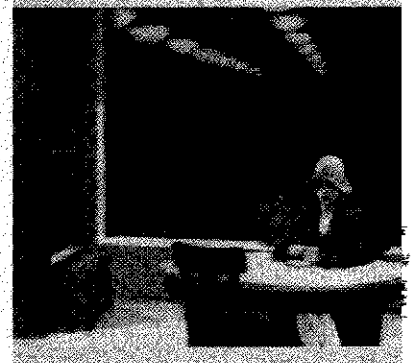
in his or her own way with the four *D*s, yet always refusing to make a "fetish out of nihilism."

If *Existential America* falls short in any way, it is that Cotkin at times inveighs against contemporary America as "a culture saturated with the consolation of easy salvation" through easily gotten material goods and worldly success. Such a culture, he fears, breeds smugness, shallowness, and superficiality.

In such moments, he fails to appreciate that it is precisely the relative richness of lifestyle options, including banal ones, which predisposes us to existentialism and its insistence that "we must act." The freedom—however incomplete it may be—that has allowed Americans to constantly reinvent themselves in ways unimaginable in Europe is hardly an impediment to a deep and continuing appreciation of existentialism.

Indeed, the acts of choosing we necessarily make on a daily basis—in the marketplace, in the workplace, in how we live—are its very essence.

Nick Gillespie (gillespie@reason.com) is **reason***'s editor-in-chief.*



Existential America (cover detail)

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Republican campaign for governor of Texas, and he hinted that Democrats might be responsible. At the time, some reporters suspected that Rove had concocted the whole thing in order to discredit the other side. "Maybe Rove did not plant the bug," say Moore and Slater, but it is "hard to disconnect him from culpability in the incident."

Why exactly do they think this? Rove had spoken of seeing *Power*, the silly Richard Gere movie about political consulting. In that movie, Gere finds a listening device in his phone. So that's where Rove must have gotten the idea, right? (I've seen *The Godfather* dozens of times, but I have not put a single horse's head in anybody's bed, or even thought about doing so.)

The ratio of speculation to fact in *Bush's Brain* goes way up as its story stretches into the Bush presidency. Moore and Slater have few sources in Washington's GOP community, so they depend on conjectures from fellow outsiders. It's like covering the Super Bowl by talking to people who couldn't get tickets.

After the September 11 attacks, they note, a former associate of Rove wrote an editorial saying that American foreign policy had helped spawn terrorism. He e-mailed a copy to Rove, who never answered. (It's possible that a senior White House aide might have been a tad busy at the time.) A right-wing Web site then posted the editorial, drawing volumes of angry e-mail to the author's inbox. Was Rove responsible, as his former friend suspects? "There was simply no way of knowing, not for sure," Moore and Slater admit, but nevertheless dwell on the tale at some length.

The authors' assessments of the power Rove wields in the Bush White House makes them sound like the coke-addled Sherlock Holmes ranting about Professor Moriarty in *The Seven-Percent Solution*: "He is the organizer of half that is evil and of nearly all that is undetected in this great city. He is a genius, a philosopher, an abstract thinker. He has a brain of the first order." They even refer to the Cuban embargo as "the Rove doctrine." Egad, Eisenhower imposed a partial embargo in 1960, and JFK expanded it the next year. Talk about a "boy genius"—Rove was in grade school at the time. Would Bush drop the embargo if Rove went off the payroll? And given the Cuban vote in the pivotal state of Florida, would Gore have dared to change it?

Moore and Slater also blame Rove's evil genius for the decision "to fight the war on terrorism, which was a just cause, and use the pureness of that purpose to advance the Republican political agenda." They start with a smidgen of fact. In June of 2002, a White House intern lost a computer disk in Lafayette Park. A Democratic Senate aide happened to find it, discovering a PowerPoint presentation by Rove and White House political director Ken Mehlman. Moore and Slater find dark significance in one slide that urged Republicans to "focus on war and the economy." Democrats damned that advice as a Rove effort to "politicize" terrorism. The plain fact is that those *are* the administration's top policy priorities, and would be if Karl Rove had never been born.

Moore and Slater's assessments of the power Rove wields in the Bush White House makes them sound like the coke-addled Sherlock Holmes ranting about Professor Moriarity in *The Seven Percent Solution*.

Carl Cannon gets the story straight in *Boy Genius*: "In truth, most of the stuff in the presentation, delivered to GOP donors at the posh Hay Adams Hotel, was boilerplate political fare. Still, it

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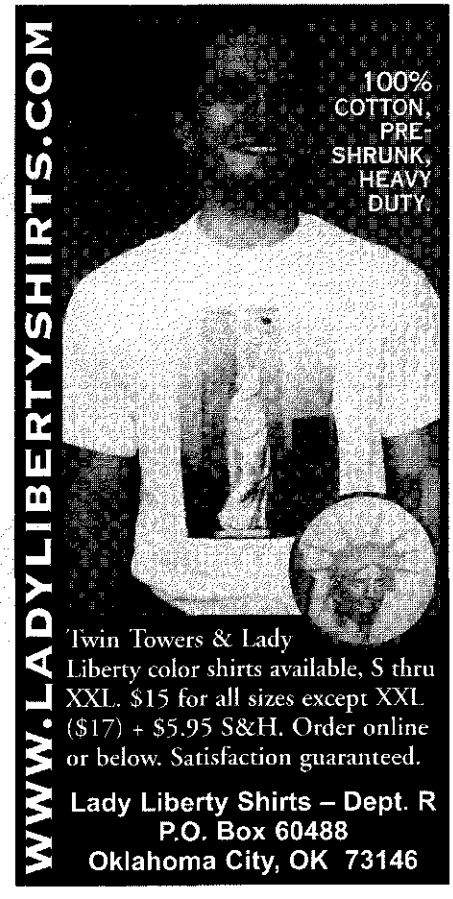
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was embarrassing to misplace your own campaign materials. Hardly the stuff of genius."

But Moore and Slater go even farther: Not only is Rove responsible for a political focus on the war—he was behind the war itself. The failure to catch Osama and crush al Qaeda was threatening Bush's political standing, the argument goes, so the administration redefined the war on terrorism as a global conflict with evil. The war on terror was big enough, they say, but now we would go after any enemy whose destruction could gratify American souls and boost Bush in the polls. "Rove's political strategy for the president transformed a policy whose scope and tenets were unprecedented in American history. All it needed was a little justification. And Iraq was handy."

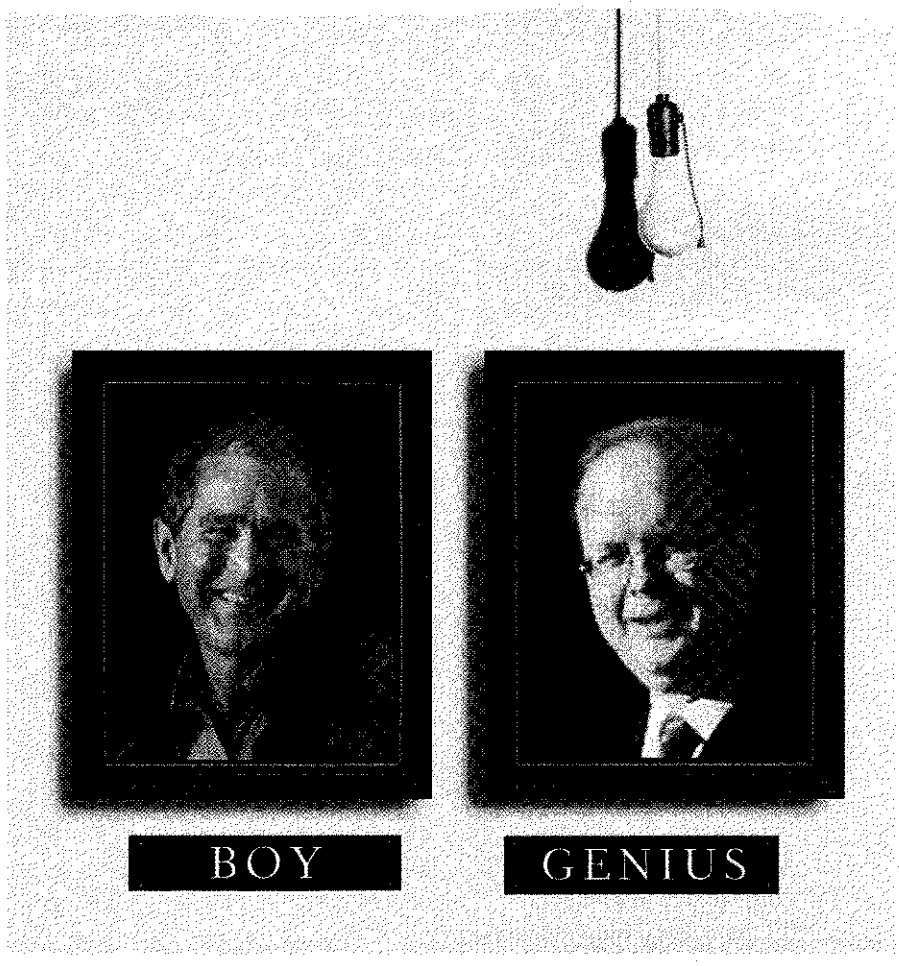
One of their "sources" on this point is a "political operative who has closely observed Rove's tactics for many years." This person says that Rove and Bush can now take their fight against evil and "apply that to anyone they want. Tom Daschle or Hussein." Another operative calls the Iraq war "the most evil political calculation in American history."

Despite the gravity of their accusation, the authors fail to offer a single scrap of evidence for Rove's masterminding the war. The "Rove-wags-the-dog" scenario does not even make sense on its own terms. Just suppose that Rove did have the power to start a war for its political payoff. When he was allegedly plotting the map to Baghdad, the generals could not guarantee swift victory. There was a small but serious chance that the conflict might drag on and on, leaving Bush and Rove in political body bags.

In a cold electoral calculation, would the probable benefits of victory have outweighed the risks of defeat? Not bloody likely. As an amateur historian, Rove would have known that successful wars are seldom good for the party in power. After World War I, the nation spurned Wilson's Democrats and turned to Warren Harding. In the first midterm election after World War II, Republicans took control of Congress. And the year after the first Bush won the first Gulf War, he lost re-election with the lowest popular-vote share of any incumbent since Taft.

Though they take the theory to loony extremes, Moore and Slater are hardly alone in painting Rove as the real power of the Bush administration. The cover artist of *Boy Genius* illustrates the idea by placing a photo of Bush above the word *Boy* and Rove above *Genius*. (Lest anyone miss the point, there is also a light bulb over Rove's head.)

Journalists can easily find people who will agree that Rove is Professor Moriarty. In Washington, there are two kinds of politicians with a stake in hyping Rove's influence: Republicans and Democrats. When Republicans disagree with the administration but do not want to criticize their president, they blame Rove. In 2001, for instance, the administration yielded to Hispanic groups that wanted to end Navy bombing tests in Vieques, Puerto Rico. Sen. James M. Inhofe, an Oklahoma Republican who backed the tests, grumbled to *The Washington Post*: "It was Karl Rove who made the decision. It was politically motivated."



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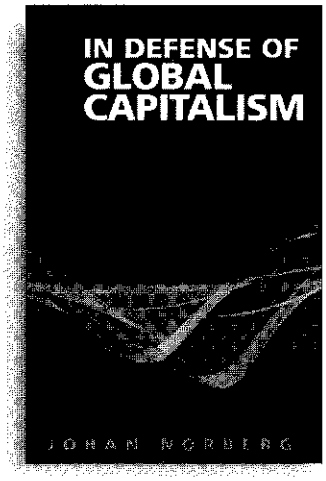

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And when Democrats have to admit that anything intelligent comes out of the Bush administration—headed by a man they dismiss as a grinning, brainless frat boy—they need Rove to take the credit. They simply cannot bring themselves to believe that that dummy Bush could have beaten Ann Richards, Al Gore, and the Taliban. In January, Sen. Ernest Hollings (D-S.C.) addressed House Majority Leader Bill Frist (R-Tenn.) on the Senate floor about economic policy: "I ask my distinguished friend from Tennessee, I know you will see Karl Rove, and I want him to see he is leading his distinguished president into the same trap that Bush 41 got led into."

Despite these two biographies and a fair amount of press coverage, Rove remains a mystery—which is a good position for a loyal political aide to be in.

It's hard to assess just how much Rove has guided the policies and strategies of the administration, since Bush is running a notably leak-free operation. White House aides and Republican operatives feel a genuine loyalty to the president, so they seldom talk out of turn to the press.

One who did was political scientist John DiIulio, who briefly headed the office of faith-based initiatives. In an e-mail to journalist Ron Suskind, DiIulio said: "Little happens on any issue without Karl's okay, and, often, he supplies such policy substance as the administration puts out. Fortunately, he is not just a largely self-taught, hyper-political guy, but also a very well informed guy when it comes to certain domestic issues. (Whether, as some now assert, he even has such sway in national security, homeland security, and foreign affairs, I cannot say.)"

The e-mail also suggested that Rove and his fellow "Mayberry Machiavellis" have what DiIulio called a "libertarian" streak. So are they channeling the thoughts of Milton Friedman and Friedrich Hayek into substantive decisions? Alas, neither the e-mail nor Suskind's *Esquire* article was clear on this point, and DiIulio later backed away from his comments. (Policy outcomes have been a mixed bag for libertarians, who may applaud the tax cuts but worry about the enormous power of the Department of Homeland Security.)

Despite these two biographies and a fair amount of press coverage, Rove remains a mystery—which is a good position for a loyal political aide to be in. For a clearer picture of his role, we will have to wait for books that can analyze the Bush administration in retrospect. Will such works depict Rove as a success? The answer will depend on the 2004 election. A Bush defeat would diminish Rove's stature, even if it happens for reasons beyond his control.

Any future analyst of Rove, or of any political aide or consultant, would do well to keep in mind these words from Ecclesiastes: "The race is not to the swift, nor the battle to the strong, neither yet bread to the wise, nor yet riches to men of understanding, nor yet favor to men of skill; but time and chance happeneth to them all." ▮

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In *Saying Yes*, Jacob Sullum of *Reason* argues that illegal drug use should be viewed the same way as drinking, with an emphasis on temperance rather than abstinence. Sullum rejects the idea that there is something inherently wrong with using chemicals to alter one's mood or mind. He uses compelling stories about real people to illustrate the point that there is such a thing as responsible drug use.

The drug war is based on the demonization of drugs and the people who use them. The assumption that certain drugs cannot be used responsibly is one of the biggest obstacles to drug policy reform. By refuting this myth, *Saying Yes* takes a bold and important step toward ending the nation's costly and devastating war on drugs.

"Jacob Sullum has produced a thoughtful, sane, and logical analysis of our drug laws. Is that even LEGAL?"
—*Dave Barry, syndicated columnist*

"*Saying Yes* is a powerful refutation of the pharmacological prejudices underlying the war on drugs. Jacob Sullum highlights the injustice of punishing people for their politically incorrect choice of intoxicants."
—*Nadine Strossen, president of the American Civil Liberties Union; professor of law, New York Law School*

"I've never used a recreational drug (or even had a sip of alcohol) in my life, but Jacob Sullum makes a great case to stop the drug wars. He exposes the tricks of the drug warriors, who scam the crowd with huckster patter about magical substances that force people to do evil."
—*Penn Jillette, the larger, louder half of Penn & Teller*

Saying Yes

In bookstores May 12

Visit www.reason.com/sayingyes/

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Subversive Style

Resisting the mullahs with nail polish, rock music, and great novels

Charles Paul Freund

A TEENAGER'S REBELLIOUS night on the town, if the town was Tehran in its early days under the mullahs, meant a trip to Kansas. That was a burger joint on Jordan Avenue, a place where the city's upscale sons and daughters set the tone and controlled the culture. Kansas was a redoubt of available coolness, a place where you could hang out, slouch west, and of course risk arrest.

Kansas and its burgers have achieved a certain degree of world fame now, along with other small-scale, daily-life efforts by Tehran's teens to squirm beyond the control of the regime's vice police. That renown comes thanks to the work of Persian-born artist Marjane Satrapi. In her autobiographical graphic novel *Persepolis: The Story of a Childhood* (Pantheon), Satrapi raises the question of why the repressive regime let a place like Kansas remain open. Was it to give some kids a place to let off steam? She thinks not. "They probably hadn't the slightest idea what 'Kansas' was," she writes.

Persepolis is in many ways the perfect act of revenge by Satrapi against the Islamism that distorted her childhood, and not merely because she is now free to portray Iran's regime in all its righteous sadism. Satrapi, who now lives and works in France, obviously tells her tales in pictures, violating Islam's anti-iconic strictures. (Actually, Persian Muslims historically ignored those strictures and created impressive art miniatures.) She even portrays God visually, assigning him attributes, which is heretical even without pictures. Indeed, she goes so far as to recount her own childish hopes of attaining prophethood, a thoroughly un-Islamic ambition.

The 33-year-old Satrapi surely must take satisfaction in such revenge, if for no other reason than the manner in which the regime allowed her to "study" art. Female models in her class were forced to pose in chadors that kept them completely hidden. When the students requested a male model—fully dressed, of course—so they could at least see and draw clothed human limbs, a vice cop instructed the students not to look at the model. Maybe Satrapi learned to draw by inference: She has drawn the regime itself, at least as it is revealed in the contorted lives that her characters are forced to endure. Her use of an intentionally naive visual style to tell a story often filled with fear and death only intensifies the power of her tale.

That story is not only about the power of mullahs, of course; it is about the Iran-Iraq war, the difficult lives of dissident leftist intellectuals, and other unhappy aspects of contemporary Iran. Satrapi writes that she doesn't want "those Iranians who lost their lives in prisons defending freedom, who died in the war against Iraq, who suffered under various oppressive regimes, or who were forced to leave their families and leave their homeland to be forgotten."

Persepolis, with its concentration on daily experience and the significance of coolness, public hang-outs, rock music, celebrity posters, chain-and-nail necklaces, and indeed of style itself, makes an interesting contrast with another recent work by a Persian expatriate, Azar Nafisi's *Reading Lolita in Tehran* (Random House). In Nafisi's memoir, a group of young women gather at the home of a female literature teacher to read and discuss a series of canonical Western books: works by Fitzgerald, James, and Austen as well as Nabokov's notorious novel.

Nafisi's memoir successfully combines the novels under discussion with simultaneous narratives about the tensions of living under a capricious regime—the difficulties her students are experiencing in dealing with the state, their families, and each other—and with flashbacks of her own life and flash-forwards to the very different life she is now living as a professor of literature at Johns Hopkins University. Many of Satrapi's themes about personal style are present in Nafisi's work too: surreptitiously painted nails, the loose lock of hair "accidentally" escaping the hijab, the power of rock music, and so on. Yet for Nafisi, real cultural meaning is usually saved for the canonical novels. Perhaps that is because, as she writes, the regime denied meaning to these works (except as they may have served the regime's ideological ends), and she has made it her purpose to restore and demonstrate literary power.

While reading *Lolita*, one of Nafisi's students raises a problem that, she says, is bothering her. Like many novels, *Lolita* tells a sad story. Why, asks the student, does reading it make us happy? If we read such a tale in the newspaper, would we feel the same way? "If we were to write about our lives here in the Islamic Republic of Iran," she asks, "should we make our readers happy?"

Nafisi struggles with the answer. Tragic works, she eventually tells her

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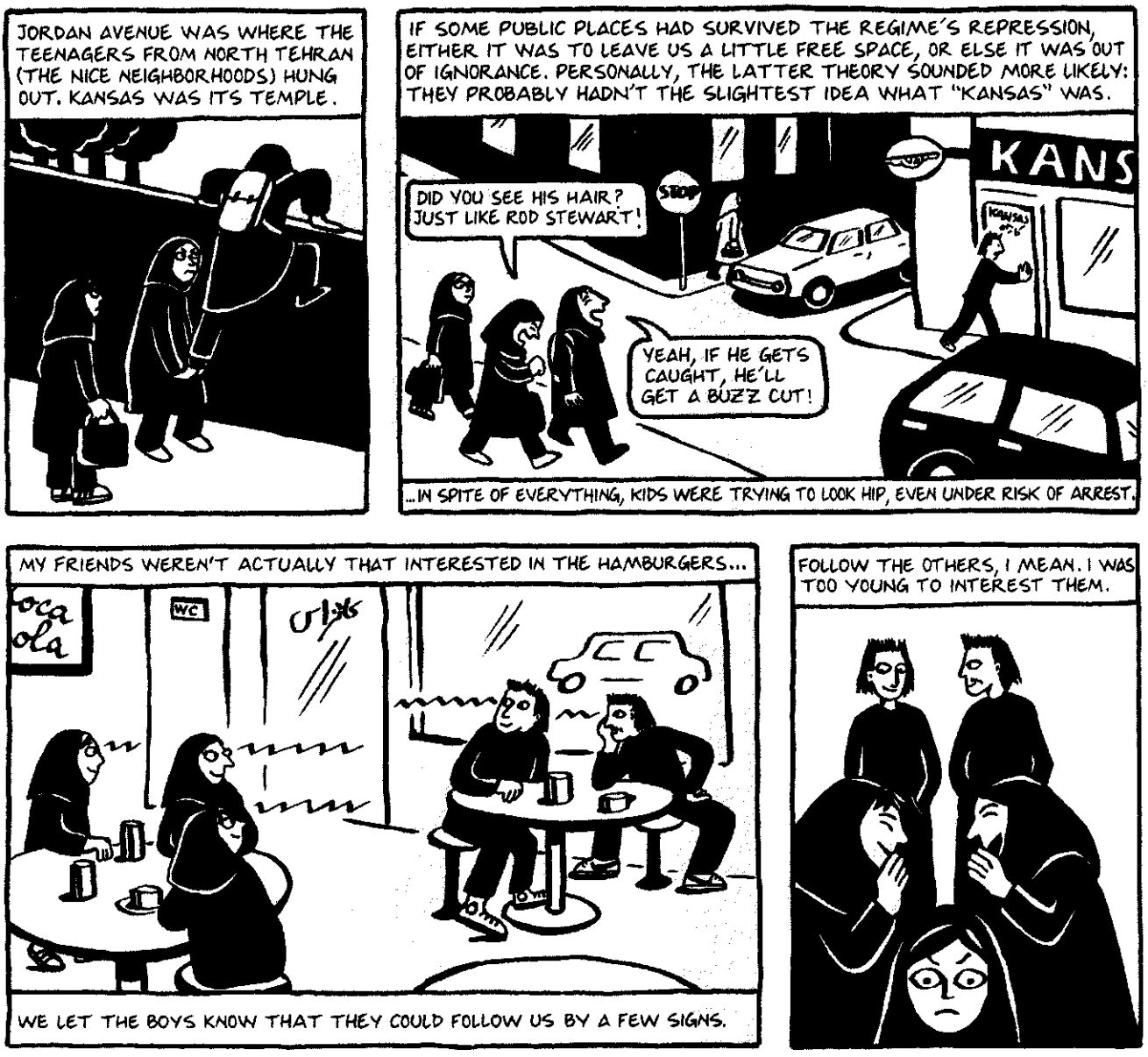
JORDAN AVENUE WAS WHERE THE TEENAGERS FROM NORTH TEHRAN (THE NICE NEIGHBORHOODS) HUNG OUT. KANSAS WAS ITS TEMPLE.
IF SOME PUBLIC PLACES HAD SURVIVED THE REGIME'S REPRESSION, EITHER IT WAS TO LEAVE US A LITTLE FREE SPACE, OR ELSE IT WAS OUT OF IGNORANCE. PERSONALLY, THE LATTER THEORY SOUNDED MORE LIKELY: THEY PROBABLY HADN'T THE SLIGHTEST IDEA WHAT "KANSAS" WAS.
KANS
DID YOU SEE HIS HAIR? JUST LIKE ROD STEWART!
YEAH, IF HE GETS CAUGHT, HE'LL GET A BUZZ CUT!
...IN SPITE OF EVERYTHING, KIDS WERE TRYING TO LOOK HIP, EVEN UNDER RISK OF ARREST.
MY FRIENDS WEREN'T ACTUALLY THAT INTERESTED IN THE HAMBURGERS...
WC
WE LET THE BOYS KNOW THAT THEY COULD FOLLOW US BY A FEW SIGNS.
FOLLOW THE OTHERS, I MEAN. I WAS TOO YOUNG TO INTEREST THEM.

students, remind us that we need not give in to the limitations of fate; such works are defiant affirmations in the face of life's transience. Authors provide the affirmation by reshaping reality, thus creating new worlds. Great art is a celebration: "The perfection and beauty of form rebels against the ugliness and shabbiness of the subject matter." Thus our hearts break for Lolita, "small, vulgar, poetic and defiant orphaned heroine" that she is.

A complex response. Few readers will disagree that aesthetic satisfaction is a response to form, though whether form must rebel and/or affirm seems an invitation to other readerly challenges. Perhaps a different answer involves the usefulness of a work to its reader, the tool a story may become in engaging with the world and even fashioning an identity. Of course, it is not only canonical literature that can play such roles.

Marjane Satrapi responded to the student's questions about tragedy and satisfaction on her own narrative terms. In *Persepolis*, Satrapi really did "write about our lives here in the Islamic Republic of Iran." Is her work simultaneously defiant and affirmative? Has she employed a form that rebels against its subject matter? Does she break her readers' hearts, and yet make them happy? Readers will answer for themselves. But each answer of yes to Nafisi's assertions concerning art will only raise a different question about catharsis, and about canons. ■

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Persepolis (page detail)

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Dirty Secret

Charles Paul Freund

HERE'S THE right hand of Michelangelo's *David*; those colored spots and lines mark the cracks, blemishes, and grime that have accumulated over 499 years. *David*'s flaws have been digitally mapped in preparation for his first cleaning since 1843, when he was bathed in hydrochloric acid. That won't happen again, but the question of *how* to clean him remains contentious, as does the issue of *whether* to clean him. One unhappy critic thinks that cleaning *David* is "a stripping-away of history," that grime and cracks are "the natural marks of time."

This debate breaks out every time an iconic work comes up for restoration. Critics of the Sistine Chapel, cleaned in an extensive project that ended in 1994, think the colors are now much too bright. Leonardo's *Last Supper*, many believe, was destroyed by a restoration completed in 1999. *Mona Lisa* may be the world's grimiest image, but nobody dares wipe the thing down.

It's true that the flaws of age are marks of time. It's also true that cultural meaning is often rooted in its materials. Change a work's material by revealing its original colors or gleam, and you risk altering its present meaning as well. A restored Sistine Chapel may be closer to Michelangelo, but it's further from us. Michelangelo made *David*, but we decide what it means.

David (detail), AFP

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What Harry Potter Can Teach the Textbook Industry

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As the world knows, the latest installment in the Harry Potter series sold five million copies on the first day it was available. Many thousands (or millions) of American children stood in line for hours to buy the book.

Here's the rub: the same children complain incessantly that their textbooks are boring. Whereas they hunger to get a Harry Potter book of nearly nine hundred pages, they can barely tolerate the equally large books that are assigned in school.

What does Harry Potter have that the textbooks don't?

Today's textbooks represent a major achievement in visual design. They glitter with charts, photographs, drawings, and pedagogical advice to the reader. But they are boring.

While researching a book about textbooks, I asked a major publisher why the textbooks are so heavy with graphics. He said, "American kids don't like to read anymore. They are so accustomed to watching television and the Internet that a book can't hold their attention without lots of visual stimuli."

The success of the Harry Potter series shows that this assumption is wrong. American youngsters will read books that are exciting and well written, regardless of their graphics. They devour the Potter books because author J. K. Rowling has infused them with classic themes drawn from legend and myth, as well as biblical imagery. Like J.R.R. Tolkien's *Lord of the Rings* books, Rowling's books resonate with suspense, mystery, intrigue, and showdowns between the forces of good and evil.

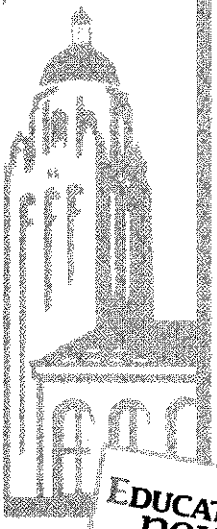
In contrast to the gripping tales told by Rowling and Tolkien, our history textbooks skim lightly above the surface of events, ignoring the fact that history is first of all a story. The history books excel at mentioning vast numbers of events, people, and ideas and compressing them into short summaries of a page or two. The drama of history and biography is sacrificed to the imperative of "covering" everything in a single volume. **Clashes of good and evil have been banished, replaced by pedestrian prose and thumbnail sketches.**

Similarly, our reading and literature books have achieved the heights of banality. Those who assemble them are careful to weed out controversial themes, anything that might upset pressure groups from left and right. They aim not to engage students' imagination but to bolster their self-esteem. Demographic correctness—the right percentage of authors and characters from every possible segment of society—has become more important than literary excellence.

Harry Potter has triumphed because his author understands the power of story. If the story is good enough, children will take a flashlight to bed so they can keep reading after the lights are out. Unlike textbook publishers, who must screen everything they print to avoid giving offense, she is free to write about a dysfunctional family, about the moral necessity to confront evil, and about how bad things happen to good people.

There is something terribly wrong with the political process that dulls the materials in our classrooms. Our children quite rightly reject writing that has been processed and homogenized by scores of textbook committees.

— *Diane Ravitch*



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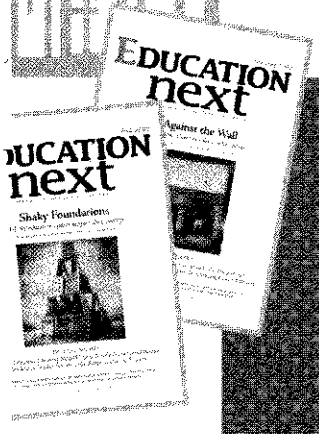

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